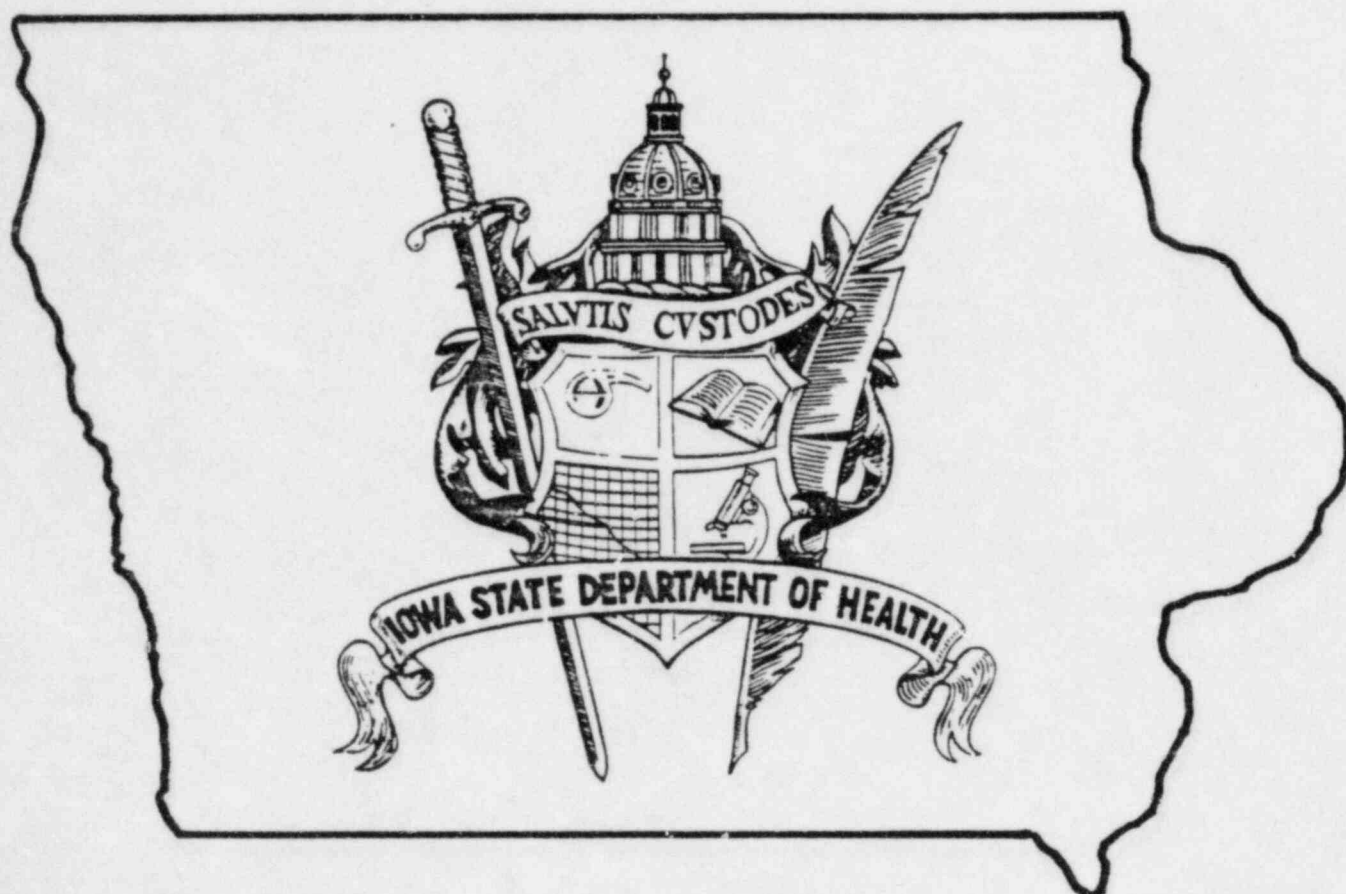


IOWA STATE DEPARTMENT of HEALTH

DIVISION OF DISEASE PREVENTION

Enviornmental Health Section



RADIOLOGICAL HEALTH PROGRAM

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TABLE OF CONTENTS

	<u>Page</u>
Foreword	1
Radiation Protection in Iowa	2
Organization, Functions and Responsibility	10
Scope of Activities	17
Licensing and Registration	18
Inspection Program	19
Compliance and Enforcement	21
Effective Date of License	23
Administrative Procedures	24
Compatibility and Reciprocity	24
Interagency Agreements	24
Radiation Laboratory Services	25
Emergency Response	26
Appendix	28

THE IOWA RADIATION CONTROL PROGRAM

FOREWORD

The State of Iowa, while recognizing that the scientific, medical and industrial usage of atomic energy can be beneficial to its citizens, is also cognizant of the hazards inherent to ionizing radiation. With these hazards in mind, and considering that the State is committed to attain the highest practicable degree of protection for the public health from the harmful effects of all types of radiation, the second session of the 70th Iowa General Assembly (1984) enacted H.F. 2110 which is an act relating to the regulation of radiation machines and radioactive material.

Section 274 of the Atomic Energy Act of 1954, as amended, authorizes the United States Nuclear Regulatory Commission (NRC) to enter into an agreement with the Governor of a state, for purposes of transferring to that state, certain functions of licensing and regulatory control of byproduct, source and less than critical quantities of special nuclear material.

Section 136C.11 of 1984 Iowa Act, H.F. 2110, authorizes the Governor, on behalf of the Iowa State Department of Health (ISDH), Division of Disease Prevention, Environmental Health Section, Radiological Health Program, to enter into an agreement with the NRC. This agreement would provide for the discontinuance of certain responsibilities of the NRC relating to ionizing radiation and the assumption of such responsibilities by the State. A copy of the subject legislation is contained in Appendix I,D.

RADIATION PROTECTION IN IOWA

Prior to 1979 there was no comprehensive regulation of x-ray or radium within the State of Iowa. Enactment of legislation entitled, "Radiation Emitting Equipment," which became effective January 1, 1979, enabled the ISDH to assure the safe installation, operation, and use of radiation emitting equipment through the process of rulemaking, registration, and inspection. Radiation emitting equipment includes sources of ionizing radiation, such as x-ray machines, accelerators, radium and other radioactive material now under the jurisdiction of the NRC.

In implementing this law, the ISDH established a radiation control program in July 1979 and promulgated rules which became effective July 1, 1980. Although Iowa has made a belated appearance on the radiation control regulatory scene, it has been able to profit from the knowledge gained by other Federal, state, and local programs who have been actively engaged in this activity for many years. In particular, the rules which Iowa adopted were directly extracted from those recommended by the National Conference of Radiation Control Program Directors, Inc., and reflect several decades of experience by other radiation control programs. These rules basically address safety requirements associated with equipment, but also include stipulations regarding maximum exposure levels, operating procedures, safety instructions, warnings, and personnel and patient protection.

Registration and Inspection

On July 1, 1980, the Environmental Health Section's Radiological Health Program (RHP) initiated its registration program for equipment. As of January 1, 1982,

approximately 2400 possessors of almost 5000 healing arts x-ray machines have registered their equipment with the Department. This number includes all healing arts users including hospitals, educational institutions, industries, and state and local agencies. In addition, there are approximately 80 facilities employing non-healing arts x-ray and 20 possessors of radium registered as are the possessors of 15 particle accelerators. Ninety percent of the registered facilities fall into the healing arts categories.

In addition to registration, the RHP also is conducting comprehensive inspections throughout the State. The radiation emitting equipment inspected to date almost entirely consists of diagnostic x-ray machines employed in the healing arts. As of April 1, 1985, the RHP has inspected over 47 percent of the x-ray tubes and two radium users. Although a wide variety of units were inspected, including newly installed equipment, major emphasis was given to equipment which might pose the greatest risk to public health either because of its antiquity or improper use. Locations of the units and information used in prioritizing were obtained from the registration program.

Approximately 17 percent of the units inspected thus far have been found to possess major items of non-compliance such as the absence of a means to limit the useful beam of the x-ray to the portion of the patient's body which is of clinical interest or the absence of an adequate means of protecting the operator from radiation exposure. An additional 67 percent of the units inspected were found to not conform with aspects of the rules of lesser public health concern. In most cases these minor non-compliances can be rectified by establishment of safety procedures and other instructional guidance to the operator or by adjustment and calibration of equipment. All non-compliance equipment has either been corrected or is in the process of being corrected.

Special Provisions

The 1979 Iowa law and subsequent rules, while diligently following the pathway blazed by other states, does incorporate several new provisions not embarked on by most of the other state programs. These new avenues toward reducing radiation exposure involve the following areas:

- 1) Restricting healing arts screening practices;
- 2) Establishing operator training requirements;
- 3) Maintaining human exposure to radiation at levels which are as low as reasonably achievable; and
- 4) Funding a radiation control program from registration/inspection fees paid by possessors of radiation emitting equipment.

Healing Arts Screening

Healing arts screening can be defined as the intentional exposure of individuals to x-ray for diagnostic purposes without the specific and individual order of a licensed practitioner of the healing arts. The Iowa Administrative Code only permits that such screening practices be conducted with the approval of the ISDH. Until the promulgation of these rules there was no legal restriction against the indiscriminate x-raying of persons in the State without involving a licensed practitioner. A number of large industrial employers were regularly hiring out-of-state mobile x-ray services to conduct annual chest x-ray examinations which were in some cases required by the employer or in one instance an

employee benefit included in the labor contract. The degree of scrutiny given to analyzing the x-ray films obtained from these screening practices or of assuring the provision of the diagnostic information retrieved from the individuals' personal physicians is highly suspect. Implementation of these regulatory provisions has significantly decreased the observed instances of unwarranted healing arts screening.

These rules are intended to minimize, if not preclude, the screening which is conducted randomly and arbitrarily, and without appropriate pre-selection. Such pre-selection would include the identification of positive reactors to tuberculin skin tests, or other individuals who have a demonstrated increased risk to disease for which x-ray diagnosis is appropriate. For instance, ISDH approval can be and has been justified for chest x-ray screening of workers exposed to asbestos or silicon dusts.

X-ray examination at the discretion and prerogative of an examining licensed practitioner who needs such radiographic information for diagnostic purposes would not, of course, be healing arts screening and, therefore, not subject to restriction. This requirement would hopefully serve to reduce unnecessary x-ray exposure to the public by reducing the number of x-rays taken for purposes of legal liability, insurance claims, workmen's compensation, or otherwise where the probability of receiving healing arts benefit is extremely remote.

Operator Training Requirements

January 12, 1983, is the effective date for the State "Minimum Training Standards for Diagnostic Radiographers" (470-42.1(136C)). This rule applies to operators of diagnostic x-ray equipment employed in the healing arts other than dentistry

or veterinary medicine. Licensed practitioners in medicine, osteopathy, chiropractic or podiatry also are not covered under the rules. The standard establishes training requirements for two categories of diagnostic radiographers, General and Limited.

General diagnostic radiographers are those who may apply x-ray to any portion of the human body to obtain a radiograph. Successful completion of a two-year training program identical to that which is necessary to obtain national certification is required for the General category.

The Limited category would include those individuals who only radiograph specific portions of the human body, such as chests, extremities or in the practice of chiropractic or podiatry. The training programs for Limited diagnostic radiographers must be specifically recognized by the ISDH and are not expected to exceed approximately 80 hours total class time.

The Conditional diagnostic radiographer category would be made available only by special exemption from these rules and would be temporary in nature. Typically such an exemption may be provided to afford a short, but reasonable period of time, for an individual to commence an acceptable training program. It is difficult to conceive of a situation in which a long-term exemption permitting a Conditional diagnostic radiographer could be justified. Hopefully, this exemption will enable the timely training of operators without undue interference with the provision of healing arts services.

As Low As Reasonably Achievable

As an adjunct to its compliance program, the ISDH is participating in a radiological health initiative with the Food and Drug Administration's (FDA) Bureau of

Radiological Health by disseminating educational material on unnecessary radiation exposure in the healing arts. This information has been provided to practitioners and other healing arts facilities for distribution to patients.

This program involves the distribution of consumer information packets to all types of healing arts facilities including medical doctors, osteopathic doctors, chiropractors, dentists, hospitals, clinics, and numerous specialty type facilities such as podiatry, gynecology, urology, internal medicine, neurology and surgery. The program is scheduled to continue indefinitely with radiation inspectors and other field personnel distributing the packets. The information being disseminated is not new. It has long been recognized in the field of radiation protection. The new aspect of this program is that it emphasizes the role of the consumer in protection efforts.

Since this program so very directly relates to diagnostic x-rays, a valuable tool of the healing arts, it seems only appropriate that dissemination of this information be closely associated with healing arts facilities.

The ISDH also is cooperating with the FDA in its "Dental Exposure Normalization Technique" (DENT) program.

This activity is primarily directed towards reducing patient exposure through quality assurance programs at dental facilities. The Iowa Dental Association has expressed its support of this program and is actively nurturing cooperation within the dental community.

Further emphasis towards encouraging reduction in patient exposure from medical x-ray procedures through voluntary quality assurance program emphasis is

contemplated for the future. Physical demonstration of financial, as well as patient exposure savings, is expected to be an effective method of obtaining cooperation from the community.

Fee System

The activities of the RHP are supported, to a large degree, from fees paid by registrants of radiation emitting equipment. This method of fiscal support is based on the statutory requirement for fees in amounts sufficient to defray the cost of administering this program. The apportionment of fees approximates as closely as possible the ISDH resources necessary to administer this program in relation to each registrant. In developing the fee, we attempted to maintain consistency with fees other states were charging for equipment as well as the method employed in assessing these fees. The fee schedule as it now exists is our best estimate of what is needed to defray the cost of this regulatory program. The variation in the fees reflects differences in equipment complexity and potential public health impact moderated by an equalizing tendency of an overall registration program. The person having legal possession of radiation emitting equipment is considered the registrant of that equipment and the person responsible for paying the fee. Fees range from \$20.00 for an individual industrial x-ray unit to a maximum of \$250.00 for facilities possessing 16 or more medical x-ray machines.

Other Activities

Basically the Iowa RHP is similar to those being implemented in most other states, with the slight exception of the features described above. Currently, major emphasis is being given to reducing exposure from diagnostic x-ray because

of its overall contribution to the total population's exposure from man-made radiation sources.

In additon to fulfilling its responsibilities under the Radiation Emitting Equipment Act, the Agency also serves to provide State government with radiological health expertise, particularly in the event of nuclear emergencies. This activity involves consulting with other agencies on such subjects as transportation of radioactive material, low-level radioactive waste disposal, radioactive contamination, protective action guides for radioactively contaminated agriculture products and medical radiological response. In the unlikely event of a nuclear emergency in Iowa, personnel from the Environmental Health Section would report to the State Emergency Operations Center and primarily perform the following functions:

- 1) Receive and interpret data regarding radioactivity releases to the environment or the potential for such releases;
- 2) Perform calculations to ascertain the resultant levels of radioactivity affecting persons;
- 3) Evaluate the impact of these radioactivity levels on the public health, and
- 4) Translate this health physics evaluation to the decision makers and assist them in making protective action decisions.

In addition to this formalized response, the agency also provides consultative and training services to the public and regulated sectors relating to radiation

safety. Investigations of complaints, minor accidents and suspected radiation problems are conducted on request as staff and resource limitations permit.

New Legislation

The second session of the 70th Iowa General Assembly (1984) passed H.F. 2110 (Appendix I,D). This legislation provides the authority for the Governor to enter into an agreement for the assumption of certain licensing and inspection functions of the NRC. Currently, we are in the process of proposing rules which will facilitate the transition of authority from the NRC to the State radiation control group.

ORGANIZATION, FUNCTIONS AND RESPONSIBILITY

The 18th General Assembly of Iowa established a State Board of Health in March 1880. The purpose of the Board was to provide for collecting vital statistics, to assign certain duties to local boards of health, and to punish neglect of duties. The Board consisted of nine members which included the State Attorney General, one civil engineer, and several physicians.

The State Board of Health and State Department of Health first appeared in the Iowa Code in 1897. The current legislation for this Board and Department is:

1. Chapter 136, The Code, stipulates that the Board is the policy making body for the Department of Health having powers and duties to:

- a. Consider and study the entire field of legislation and administration concerning public health, hygiene and sanitation.
- b. Advise the Department relative to:
 - i. the causes of disease and epidemics and the effect of locality, employment and living conditions upon public health
 - ii. the sanitary conditions in the educational, charitable, correction and penal institutions in the State
 - iii. communicable and infectious disease including zoonotic diseases, quarantine and isolation, venereal diseases, antitoxins and vaccines housing and vital statistics
- c. Establish policies governing the performance of the Department in the discharge of any duties imposed on it by law.
- d. Establish policies for the guidance of the Commissioner in the discharge of his duties.
- e. Investigate the conduct of the work of the Department and for this purpose it shall have access at any time to all books, papers, documents and records of the Department.
- f. Advise or make recommendations to the Governor or General Assembly relative to public health, hygiene and sanitation.

g. Adopt, promulgate, amend and repeal rules and regulations consistent with law for the protection of public health and for the guidance of the Department. All rules which have been or are hereafter adopted by the Department shall be subject to approval by the Board.

2. Chapter 135, The Code, stipulates that the Commissioner of Public Health is the head of the State Department of Health having the power and duties to:

A. Exercise general supervision over the public health, promote public hygiene and sanitation and, unless otherwise provided, enforce the laws relating to same.

B. Conduct campaigns for the people in hygiene and sanitation.

C. Issue monthly health bulletins containing fundamental health principles and other data deemed of public interest.

D. Make investigations and surveys with respect to the causes of disease and epidemics and the effect of locality, employment, and living conditions on the public health.

E. Make inspections of the sanitary conditions in the educational, charitable, correctional, and penal institutions in the State.

F. Make inspections of the sanitary conditions in any locality of the State upon written petition of five or more citizens from said

locality and issue directions for the improvement of the same which shall be executed by the local board.

- G. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities.
- H. Exercise general supervision of the administration of the housing law and give aid to the local authorization in the enforcement of the same.
- I. Enforce the law relative to the "Practice of Certain Professions Affecting the Public Health."
- J. Establish and maintain such divisions in the Department as are necessary for the proper enforcement of the laws administered by it including a division on contagious and infectious diseases, a division of venereal disease, a division of vital statistics and a division of examinations and licenses; but the various services of the Department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the Department under the most economical methods.
- K. Establish, publish and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the various laws, the administration and supervision of which are imposed upon the Department.

- L. Establish standards for issuing permits and exercise control over the distribution of venereal disease prophylactics distributed by methods not under the direct supervision of a licensed physician under Chapters 148, 150 or 150A or a pharmacist license under 147. Any person selling, offering for sale or giving away any venereal disease prophylactic in violation of the standards established by the Department shall be fined not exceeding five hundred dollars and the Department shall revoke this permit.
- M. Administer the statewide public health nursing and homemaker-home health aide programs by approving grants of state funds to the local boards of health and county boards of supervisors and by providing guidelines for the approval of the grants and allocations of the State funds.

The Department has two assistants to the Commissioner who are responsible for 1) Central Administration and Professional Licensure, and 2) Health Planning and Development. There are also four division directors responsible for 1) Health Facilities, 2) Disease Prevention, 3) Personal and Family Health, and 4) Community Health. A chart showing the present organization of the Department of Health is contained in Appendix IIA.

Funding for the Department is both State and Federal. Federal Block Grants are used to fund many of the Department's programs. Funds for the RHP are 19 percent Federal contract money, 40 percent from registration fees and 41 percent state funds.

Although our legislation to regulate radiation producing machines and radioactive materials does not mandate the appointment of an advisory committee, such a committee has been appointed by the Commissioner of Health. The current committee is made up of 20 individuals representing engineering, diagnostic radiography, nuclear medicine, dentistry, veterinary medicine, chiropractic, podiatry, manufacturers, industry, allied health organizations and public interest groups. Appendix III is a list of the membership of the present committee. This committee's responsibilities are to act as a technical resource and a review mechanism for rules promulgated by the Department. The RHP of the Environmental Health Section has the authority to regulate the use of all sources of ionizing radiation, except those it may exempt or are under the jurisdiction of the Federal government. A chart showing the organization of the Environmental Health Section is shown in Appendix IIB.

All members of the RHP staff have experience in health physics and are in the process of receiving specialized training relating to radioactive materials. Professional staff including both new and existing personnel will continue attending NRC training courses as they become available to attain and maintain a high level of technical competency. Responsibilities, background and experience of radiation control personnel are given in Appendix IV.

The RHP is within the Environmental Health Section of the Division of Disease Prevention. The Section Director is responsible for signing licenses and overall general supervision of the Program. The Coordinator of the RHP will be responsible for supervising the review of license applications and the justification and writing of all licenses. This individual will also review all inspection reports and be responsible for corresponding with licensees to advise them of items of

non-compliance found during inspections and eliciting compliance. The Coordinator will spend one-third of a person-year on agreement state program activities. A senior staff member of the RHP will be responsible for conducting license application review and preparation of licenses. He will have lead responsibility for inspection of licensees and investigation of incidents pertaining to radioactive materials. This staff person will also be an integral part of all emergency response efforts. It is anticipated that a major portion of this individual's time will be spent on the agreement state program. Prior to consumation of the agreement a position will be established to provide secretarial support for this program. It is also anticipated that the RHP professional staff will be trained and used in the radioactive materials program to do routine inspections. It is expected that the total personnel time devoted to the radioactive materials program will be at least two-person-years.

Within Iowa the Departments of Health, Water, Air and Waste Management, Transportation and the Bureau of Labor also have authority regarding radioactive materials. To avoid duplication of effort, promote coordination of radiation protection activities and assure uniform regulation and timely investigation of all potentially hazardous situations resulting from radioactive material, appropriate interagency agreements are necessary. The Iowa Code (Appendix IB) permits state and local governments in Iowa to make efficient use of their powers by enabling them to provide joint services and facilitate with other agencies and to cooperate in other ways of mutual advantage. To consolidate the radiological health activities the Iowa State Department of Health has entered into 28E Agreements with the Department of Water, Air and Waste Management, the Department of Transportation and the Bureau of Labor. Appendix IB.1, 2 and 3 contains copies of the subject legislation and a copy of each of the 28E agreements.

SCOPE OF ACTIVITIES

The RHP administers the regulatory program associated with licensing of radioactive materials and registration of radiation machines, special projects and emergency response. Chapter 136C, The Code, (Attachment I, D) outlines the Department's duties. General laboratory services for the State are provided by the University Hygienic Laboratory (UHL) at the University of Iowa, Iowa City. Laboratory analysis needed by the RHP would be provided by the UHL through a contractual agreement to be established prior to the signing of the NRC agreement. Also, as part of this contractual agreement we will make provision to obtain environmental surveillance data generated by UHL.

Based on a review of NRC licensees in Iowa it would appear that there is not an immediate need for the RHP to have environmental surveillance capabilities. As we progress into the agreement state program, should the need arise, we will take whatever action is necessary to verify environmental surveillance data provided by a licensee or to conduct environmental surveillance activities to determine if a public health problem exists and to determine the extent of such a problem.

Within Iowa there are 5,251 registered radiation machine tubes which includes 2,752 dental tubes, 1,822 medical tubes, 398 chiropractic tubes, 68 podiatry tubes, and 195 tubes used for non-healing arts purposes. These tubes are all contained in 2,451 registered facilities. There are 27 linear accelerators registered with the Program. Eighteen are used for medical therapy purposes and nine are used for industrial purposes. We also have 24 facilities registered who use NARM products. As of March 1, 1985, there are 172 NRC licenses in Iowa. It is anticipated that the State will assume approximately 170 of these licenses.

REGULATORY PROCEDURES AND POLICY

LICENSING AND REGISTRATION

Chapter 136C, The Code, requires licensing of all radioactive materials and radiation machines except for sources of radiation which are specifically exempted by rule. Fees are charged for radiation machine registration as set forth in 470-38.13(1) of our Radiation Emitting Equipment Rules, Title IV. 470-38.13(2) sets forth the provision that a license and inspection fee for radioactive materials will be based on the provisions of 10 CFR Part 170.

Licensing procedures are being developed and will be consistent with those of the NRC. A draft licensing application and sample forms contained in Apperdix V will be used in conjunction with licensing and regulatory guides patterned after NRC documents.

General licenses are provided by rule without filing an application with the Department or the issuance of a licensing document. General licenses will be issued for specified materials under specified conditions when it is determined that the issuance of specific licenses is not necessary to protect the public health and safety. Specific licenses or amendments thereto will be issued upon review and approval of an application. A specific license will be issued only to named persons or facilities under the supervision of a named person and will incorporate appropriate conditions and expiration date. A pre-licensing inspection will be conducted when appropriate.

The Department will establish a subcommittee of our Ad Hoc Committee on Rules for Radiation Emitting Equipment and seek its advise and consultation regarding all

applications for non-routine medical use of radioactive materials. Appropriate research protocols will be required as a part of such an application. The Department will maintain knowledge of current developments, techniques and procedures for medical use applicable to the licensing program through continuing contact and information exchange with the NRC, other agreement states and the medical profession.

The registration and inspection program for radiation producing machines will continue and the use and inspection of NARM will be phased into the radioactive materials program.

INSPECTION PROGRAM

The Department has an inspection/compliance program for radiation machines which is similar to that which will be established for the radioactive materials program. Inspections for the purpose of evaluating radiation safety and determining compliance with appropriate rules and provisions of licenses will be conducted as scheduled or in response to requests or complaints. Inspection frequency will be based upon the extent of the potential hazard and experience with the particular facility. Inspection priorities may be changed on a case-by-case basis consistent with current NRC practices. It is anticipated that the state inspection of licensees will be conducted in accordance with the following inspection frequency chart.

LICENSE TYPEINSPECTION FREQUENCY

Industrial Radiography	1 year
Broad Medical	2 years
Broad Academic	2 years
Nuclear Pharmacy	2 years
Research and Development	3 years
Broad Industrial (A & B)	3 years
Nuclear Medicine	3 years
Teletherapy	3 years
Broad Industrial (C)	5 years
Non-Medical Group	5 years
Limited Industrial	6 years
Academic (not covered above)	6 years
Gauges, Calibrators, etc.	Initial (As Needed)

Inspections will be made by pre-arrangement with the licensee or may be unannounced if the Department determines that such arrangements would be most constructive. Written inspection procedures developed with NRC guidance will be followed in conducting inspections and preparing reports.

The RHP has personnel trained in regulatory practice and procedures. Additionally, program personnel continue to accompany NRC inspectors during their field inspections in Iowa to gain a higher degree of competency in evaluating radiation safety and to determine compliance with appropriate regulations and license provisions. Inspections will include the observation of pertinent facilities, operators and equipment; a review of the pertinent records and of radioactive materials--all as appropriate to the scope of the activity, conditions of the license and applicable rules. In addition, independent measurements will be made as appropriate.

At the start and conclusion of an inspection, personal contact will be made at management levels whenever possible. Following the inspection, results will be discussed with management. Prompt investigations and reports will be made of all reported or alleged incidents to determine the cause, the steps to be taken for correction, and the prevention of similar incidents in the future.

COMPLIANCE AND ENFORCEMENT

Compliance with rules and license conditions will be determined by inspections and evaluation of inspection reports. When there are items of non-compliance, the licensee or registrant will be informed at the time of inspection as follows:

1. When the items are minor and the licensee or registrant agrees at the time of inspection to correct them, written inspection findings will be prepared which will list the items of non-compliance, confirm any corrections made during the inspection, and require acknowledgment by the person interviewed. The licensee or registrant will be informed

that a review of any corrective action items will be conducted at the time of the next regular inspection or by a reinspection.

2. When the non-compliance is considered serious, the person interviewed will be informed at the time of the inspection. Written notification of inspection findings will be sent to the licensee or registrant which will delineate the items of non-compliance and require a written response within 30 days of the written notification date. The response from the licensee or registrant shall include a corrective action plan and a timetable which will outline the completion dates for correcting all non-compliance items.
3. If no reply is received to the initial written notification within the specified time, a regulatory letter will be sent to management. This letter will order compliance and advise that if corrective action is not initiated, the Department will seek appropriate penalties and direct remedial relief.
4. Continued non-compliance as determined by a reinspection, if appropriate, or by failure to respond within five days of the regulatory letter could result in Departmental action as outlined in 470-38.9(5) of our Radiation Emitting Equipment Rules, Title IV. The Departmental action may include one or a combination of the following:
 - a. Impound or order the impounding of radioactive material in accordance with Iowa Code, Section 136C.5 Subsection 5.
 - b. Impose an appropriate civil penalty.

- c. Revoke a radioactive materials license.
- d. Request the County Attorney or the Attorney General to seek court action to enjoin violations and seek conviction for a simple misdemeanor.
- e. Take enforcement action that the Department feels appropriate and necessary and is authorized by law.

The Department uses its best efforts to attain compliance through cooperation and education prior to initiating the formal legal procedures outlined above.

Upon request by a licensee or upon the determination by the Department, the terms and conditions of a licensee may be amended, consistent with our legislation or rules, to meet changing conditions in operations or to remedy technicalities of non-compliance.

EFFECTIVE DATE OF LICENSE

Any person who possesses a license for agreement materials issued by the NRC, on the effective date of the agreement with the NRC, shall be deemed to possess a like license issued by the Department which shall expire either 90 days after the receipt from the Department of a notice of expiration of such license or on the date of expiration specified in the Federal license, whichever is earlier.

ADMINISTRATIVE PROCEDURES

The basic standards of procedures for administrative agencies in the State of Iowa are set forth in Chapter 17A, The Code (copy in Attachment IA). The Department will follow the provisions of this Chapter, Chapter 136C, The Code, which is the act relating to the Regulation of Radiation Machines and Radioactive Material and the Department's Radiation Emitting Equipment Rules, Title IV, with respect to hearings, issuance of orders and judicial review of findings.

COMPATIBILITY AND RECIPROCITY

In promulgating the present Radiation Emitting Equipment Rules, Title IV, the Department has, insofar as practicable, maintained compatibility with NRC and agreement state regulations, has avoided requiring dual licensing and has provided for reciprocal recognition of other agreement states and Federal licensees.

Through these rules the State has adopted radiation protection standards and will strive to maintain compatibility with NRC and other agreement states. The Department will also cooperate with NRC and other agreement states in interchanging information and statistics relating to control of radioactive materials.

INTERAGENCY AGREEMENTS

Interagency agreements are provided for in Chapter 28E, The Code, (copy in Appendix IB). Currently the ISDH has 28E Agreements with the Iowa Bureau of Labor, the Iowa Department of Transportation, and the Iowa Department of Water,

Air and Waste Management. (Copies of each agreement are attached to appropriate legislation in Appendix IB.1, 2 and 3.) The purpose of each is to avoid duplication of effort and to promote coordination of radiation protection activities; assure uniform regulation of the use, manufacture, production, distribution, sale, transport, transfer, installation, repair, receipt, acquisition, ownership and possession of radioactive materials from a radiological health and safety standpoint relating to the exposure of individuals, and to assure timely investigation of all potentially hazardous situations resulting from radioactive material.

RADIATION LABORATORY SERVICES

The RHP has or will be obtaining the equipment to have the capability of evaluating samples collected during routine inspections and for making independent measurements. The current equipment the program has is listed in Appendix VI. We have included in our 1985-86 budget request \$10,500.00 for new equipment which will include additional ion chambers, alpha detection process, a neutron measurement device, audible personnel monitoring devices, etc. We have a good working relationship with Iowa State University (ISU), the University of Iowa (U of I), and the University (State) Hygienic Laboratory (UHL). These institutions have very good radiation measurement inventories and in the past we have been able to borrow equipment as the need arises. All instruments used for inspection and emergency response will be calibrated on the basis recommended by NRC.

The three institutions mentioned above have the capability to do gamma spectroscopy and gross alpha-beta counting of environmental samples. In most cases UHL

will be used because it is the agency which provides laboratory services for the State of Iowa. If the UHL is unable to perform necessary tests, assistance will be requested from the appropriate Federal agency.

EMERGENCY RESPONSE

The RHP has technically trained personnel and specialized equipment to investigate and evaluate incidents involving ionizing radiation. The program continues to prepare for such response by providing the following:

1. Trained staff for advisement required to meet any given situation.
2. Trained and equipped staff for emergency field activities. If the magnitude to the incident would be too great, assistance could be obtained from the three state emergency response teams which are located at ISU, U of I and UHL.
3. Transportation to the incident site via private auto or by any type of state mode of transportation which would be necessary for prompt response.
4. Established liaison with appropriate Federal officials.
5. Training of key personnel of other State/local agencies.

Radiological assistance in the form of monitoring, liaison with appropriate authorities and recommendations for area security and cleanup are provided by the Department. All program personnel will be maintained at an operation-ready level

of training. This will be accomplished by training received in house and from Federal agencies.

Appendix VIIA is the portion of the Nuclear Power Plant Emergency Response criteria of the Iowa Emergency Plan which relates to the ISDH activities. The Plan addresses only off-site releases from fixed nuclear facilities. Upon review you will note that it is the responsibility of the Department to advise the Iowa Office of Disaster Services (ODS) of the extent of the hazard to the public health and safety and recommend protective actions as necessary.

In Appendix VIIB is the portion of Annex E of the Iowa Emergency Plan which outlines the telephone procedure for a radioactive material incident. This Annex is currently being revised to address State actions to be taken regarding radioactive material spills, overexposures, transportation accidents, fires or explosions, theft, etc. All licensees will be given a copy of Annex E and instructed in the proper method of reporting incidents which occur regarding incidents outside of their facility.

Appendix I - Appropriate Iowa Statutes and Interagency Agreements
Appendix II - Organizational Charts
Appendix III - Ad Hoc Committee on Rules for Radiation Emitting Equipment
Appendix IV, A - Radiation Control Personnel Chart
Appendix IV, B - Radiation Control Personnel Resumes
Appendix V - Sample Forms
Appendix VI - Inventory of Radiological Health Equipment
Appendix VII - Iowa Emergency Plan

Appendix I

Appropriate Iowa Statutes and Interagency Agreements

- A. Chapter 17A, The Code - Administrative Procedure Act
- B. Chapter 28E, The Code - Joint Exercise Of Governmental Powers
 - 1. Interagency Agreement - Iowa Bureau of Labor
 - 2. Interagency Agreement - Iowa Department of Transportation
 - 3. Interagency Agreement - Iowa Department of Water, Air And Waste Management
- C. Chapter 88, The Code - Occupational Safety and Health
- D. Chapter 136C, The Code - Radiation Machines and Radioactive Materials
- E. Chapter 307, The Code
- F. Chapter 325, The Code
- G. Chapter 327, The Code
- H. Chapter 327A, The Code
- I. Chapter 327B, The Code, Interstate Commerce Commission Authority of Motor Carriers
- J. Chapter 455B, The Code - Department of Water, Air and Waste Management

17.31 and 17.32 Repealed by 58GA, ch 76, §1.

17.33 Repealed by 67GA, ch 1105, §9; see §303A.22.

CHAPTER 17A

ADMINISTRATIVE PROCEDURE ACT

Referred to in:

7A.47	§ 8.1	110.25	189.14	230.21	303A.23	328.19	455B.429	527.11
8.15	§ 8.14	111.41	170.14	234.4	304.1	331.80.7	455B.446	527.12
10.4	§ 8.3	123.21	170B.9	234.79	304.17	332A.4	455B.452	527.14
10A.8	§ 8.17	123.24	172A.13	237.3	306.36	336.36	455B.453	533.20
10A.9	§ 8.18	125.7	172B.1	237.1A	306C.2	360.10	455B.471	533.34
20.6	§ 8.36	135.20	172C.1	237A.12	307.10	364.15	455C.10	535.2
21.5	§ 8.29	135.32	172C.6	238.19	307.19	421.1	455D.12	535.9
22.11	§ 8.30	135.70	175.6	247A.11	307.30	421.7	455D.17	536A.20
22.12	§ 8.3	135.74(1)	181.18	249.4	307A.2	421.17	455E.4	536B.4
22B.6	§ 8A.1	13A.82	187.4	249A.15	307B.7	422.72	455E.6	536B.6
28.43	§ 8B.3	135.95	187.9	249B.16	308.4	422.77	455E.15	536B.15
28.51	§ 8B.9	135C.14	187.13	249B.21	311A.6	427.132, 331	455E.15	536B.15
28C.4	§ 8B.10	135C.22	196.2	249B.35	316.1	427A.1	455E.17	537.11(1)
29C.9	§ 8.5	135C.30	199.1	252B.3	316.9	429.7	455E.25	537.11(1)
29C.10	§ 1.4	135C.43	204.201	257.23(10)	321.201	429.7	455E.33	537.11(1)
30A.8	§ 1A.12	136A.3	204A.2	258A.6	321.194	436.11	455E.33	537.11(1)
47.8	§ 2.7	136C.3	213.2	260.31	321.233	441.9	455E.33	537.11(1)
47.9	§ 6.8	136C.4	214.10	260A.8	321.234	441.47	455E.33	537.11(1)
56.3	§ 6.11	136.18	214.11	261.19	321.237	441.49	455E.33	537.11(1)
56.9	§ 7B.4	136.9	214.12	261.26	321.240	441.31	455E.33	537.11(1)
56.9	§ 8B.1	136A.8	215.23	261.27	321.243	441.31	455E.33	537.11(1)
56.10	§ 8B.13	144.3	215.24	261.40	321.249	441.31	455E.33	537.11(1)
56.10	§ 8B.14	144.34	217.3	261.51	321.251	441.31	455E.33	537.11(1)
56.10	§ 8B.15	144.11	217.35	261.52	321.252	441.31	455E.33	537.11(1)
56.10	§ 8B.16	144.11	217.36	261.53	321.253	441.31	455E.33	537.11(1)
56.10	§ 8B.17	144.11	217.37	261.54	321.254	441.31	455E.33	537.11(1)
56.10	§ 8B.18	144.11	217.38	261.55	321.255	441.31	455E.33	537.11(1)
56.10	§ 8B.19	144.11	217.39	261.56	321.256	441.31	455E.33	537.11(1)
56.10	§ 8B.20	144.11	217.40	261.57	321.257	441.31	455E.33	537.11(1)
56.10	§ 8B.21	144.11	217.41	261.58	321.258	441.31	455E.33	537.11(1)
56.10	§ 8B.22	144.11	217.42	261.59	321.259	441.31	455E.33	537.11(1)
56.10	§ 8B.23	144.11	217.43	261.60	321.260	441.31	455E.33	537.11(1)
56.10	§ 8B.24	144.11	217.44	261.61	321.261	441.31	455E.33	537.11(1)
56.10	§ 8B.25	144.11	217.45	261.62	321.262	441.31	455E.33	537.11(1)
56.10	§ 8B.26	144.11	217.46	261.63	321.263	441.31	455E.33	537.11(1)
56.10	§ 8B.27	144.11	217.47	261.64	321.264	441.31	455E.33	537.11(1)
56.10	§ 8B.28	144.11	217.48	261.65	321.265	441.31	455E.33	537.11(1)
56.10	§ 8B.29	144.11	217.49	261.66	321.266	441.31	455E.33	537.11(1)
56.10	§ 8B.30	144.11	217.50	261.67	321.267	441.31	455E.33	537.11(1)
56.10	§ 8B.31	144.11	217.51	261.68	321.268	441.31	455E.33	537.11(1)
56.10	§ 8B.32	144.11	217.52	261.69	321.269	441.31	455E.33	537.11(1)
56.10	§ 8B.33	144.11	217.53	261.70	321.270	441.31	455E.33	537.11(1)
56.10	§ 8B.34	144.11	217.54	261.71	321.271	441.31	455E.33	537.11(1)
56.10	§ 8B.35	144.11	217.55	261.72	321.272	441.31	455E.33	537.11(1)
56.10	§ 8B.36	144.11	217.56	261.73	321.273	441.31	455E.33	537.11(1)
56.10	§ 8B.37	144.11	217.57	261.74	321.274	441.31	455E.33	537.11(1)
56.10	§ 8B.38	144.11	217.58	261.75	321.275	441.31	455E.33	537.11(1)
56.10	§ 8B.39	144.11	217.59	261.76	321.276	441.31	455E.33	537.11(1)
56.10	§ 8B.40	144.11	217.60	261.77	321.277	441.31	455E.33	537.11(1)
56.10	§ 8B.41	144.11	217.61	261.78	321.278	441.31	455E.33	537.11(1)
56.10	§ 8B.42	144.11	217.62	261.79	321.279	441.31	455E.33	537.11(1)
56.10	§ 8B.43	144.11	217.63	261.80	321.280	441.31	455E.33	537.11(1)
56.10	§ 8B.44	144.11	217.64	261.81	321.281	441.31	455E.33	537.11(1)
56.10	§ 8B.45	144.11	217.65	261.82	321.282	441.31	455E.33	537.11(1)
56.10	§ 8B.46	144.11	217.66	261.83	321.283	441.31	455E.33	537.11(1)
56.10	§ 8B.47	144.11	217.67	261.84	321.284	441.31	455E.33	537.11(1)
56.10	§ 8B.48	144.11	217.68	261.85	321.285	441.31	455E.33	537.11(1)
56.10	§ 8B.49	144.11	217.69	261.86	321.286	441.31	455E.33	537.11(1)
56.10	§ 8B.50	144.11	217.70	261.87	321.287	441.31	455E.33	537.11(1)
56.10	§ 8B.51	144.11	217.71	261.88	321.288	441.31	455E.33	537.11(1)
56.10	§ 8B.52	144.11	217.72	261.89	321.289	441.31	455E.33	537.11(1)
56.10	§ 8B.53	144.11	217.73	261.90	321.290	441.31	455E.33	537.11(1)
56.10	§ 8B.54	144.11	217.74	261.91	321.291	441.31	455E.33	537.11(1)
56.10	§ 8B.55	144.11	217.75	261.92	321.292	441.31	455E.33	537.11(1)
56.10	§ 8B.56	144.11	217.76	261.93	321.293	441.31	455E.33	537.11(1)
56.10	§ 8B.57	144.11	217.77	261.94	321.294	441.31	455E.33	537.11(1)
56.10	§ 8B.58	144.11	217.78	261.95	321.295	441.31	455E.33	537.11(1)
56.10	§ 8B.59	144.11	217.79	261.96	321.296	441.31	455E.33	537.11(1)
56.10	§ 8B.60	144.11	217.80	261.97	321.297	441.31	455E.33	537.11(1)
56.10	§ 8B.61	144.11	217.81	261.98	321.298	441.31	455E.33	537.11(1)
56.10	§ 8B.62	144.11	217.82	261.99	321.299	441.31	455E.33	537.11(1)
56.10	§ 8B.63	144.11	217.83	261.100	321.300	441.31	455E.33	537.11(1)
56.10	§ 8B.64	144.11	217.84	261.101	321.301	441.31	455E.33	537.11(1)
56.10	§ 8B.65	144.11	217.85	261.102	321.302	441.31	455E.33	537.11(1)
56.10	§ 8B.66	144.11	217.86	261.103	321.303	441.31	455E.33	537.11(1)
56.10	§ 8B.67	144.11	217.87	261.104	321.304	441.31	455E.33	537.11(1)
56.10	§ 8B.68	144.11	217.88	261.105	321.305	441.31	455E.33	537.11(1)
56.10	§ 8B.69	144.11	217.89	261.106	321.306	441.31	455E.33	537.11(1)
56.10	§ 8B.70	144.11	217.90	261.107	321.307	441.31	455E.33	537.11(1)
56.10	§ 8B.71	144.11	217.91	261.108	321.308	441.31	455E.33	537.11(1)
56.10	§ 8B.72	144.11	217.92	261.109	321.309	441.31	455E.33	537.11(1)
56.10	§ 8B.73	144.11	217.93	261.110	321.310	441.31	455E.33	537.11(1)
56.10	§ 8B.74	144.11	217.94	261.111	321.311	441.31	455E.33	537.11(1)
56.10	§ 8B.75	144.11	217.95	261.112	321.312	441.31	455E.33	537.11(1)
56.10	§ 8B.76	144.11	217.96	261.113	321.313	441.31	455E.33	537.11(1)
56.10	§ 8B.77	144.11	217.97	261.114	321.314	441.31	455E.33	537.11(1)
56.10	§ 8B.78	144.11	217.98	261.115	321.315	441.31	455E.33	537.11(1)
56.10	§ 8B.79	144.11	217.99	261.116	321.316	441.31	455E.33	537.11(1)
56.10	§ 8B.80	144.11	217.100	261.117	321.317	441.31	455E.33	537.11(1)
56.10	§ 8B.81	144.11	217.101	261.118	321.318	441.31	455E.33	537.11(1)
56.10	§ 8B.82	144.11	217.102	261.119	321.319	441.31	455E.33	537.11(1)
56.10	§ 8B.83	144.11	217.103	261.120	321.320	441.31	455E.33	537.11(1)
56.10	§ 8B.84	144.11	217.104	261.121	321.321	441.31	455E.33	537.11(1)
56.10	§ 8B.85	144.11	217.105	261.122	321.322	441.31	455E.33	537.11(1)
56.10	§ 8B.86	144.11	217.106	261.123	321.323	441.31	455E.33	537.11(1)
56.10	§ 8B.87	144.11	217.107	261.124	321.324	441.31	455E.33	537.11(1)
56.10	§ 8B.88	144.11	217.108	261.125	321.325	441.31	455E.33	537.11(1)
56.10	§ 8B.89	144.11	217.109	261.126	321.326	441.31	455E.33	537.11(1)
56.10	§ 8B.90	144.11	217.110	261.127	321.327	441.31	455E.33	537.11(1)
56.10	§ 8B.91	144.11	217.111	261.128	321.328	441.31	455E.33	537.11(1)
56.10	§ 8B.92	144.11	217.112	261.129	321.329	441.31	455E.33	537.11(1)
56.10	§ 8B.93	144.11	217.113	261.130	321.330	441.31	455E.33	537.11(1)
56.10	§ 8B.94	144.11	217.114	261.131	321.331	441.31	455E.33	537.11(1)
56.10	§ 8B.95	144.11	217.115	261.132	321.332	441.31	455E.33	537.11(1)
56.10	§ 8B.96	144.11	217.116	261.133	321.333	441.31	455E.33	537.11(1)
56.10	§ 8B.97	144.11	217.117	261.134	321.334	441.31	455E.33	537.11(1)
56.10	§ 8B.98	144.11	217.118	261.135	321.335	441.31	455E.33	537.11(1)
56.10	§ 8B.99	144.11	217.119	261.136	321.336	441.31	455E.33	537.11(1)
56.10	§ 8B.100	144.11	217.120	261.137	321.337	441.31	455E.33	537.11(1)

in the conduct of their most important functions; to increase public access to governmental information; to increase public participation in the formulation of administrative rules; to increase the fairness of agencies in their conduct of contested case proceedings; and to simplify the process of judicial review of agency action as well as increase its ease and availability. In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical and effective government administration. The chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

[C75, 77, 79, 81, §17A.1]

17A.2 Definitions.

As used in this chapter:

1. "Agency" means each board, commission, department, officer or other administrative office or unit of the state. "Agency" does not mean the general assembly, the judicial department or any of its components, the office of consumer advocate, the governor or a political subdivision of the state or its offices and units. Unless provided otherwise by statute, no less than two-thirds of the members eligible to vote of a multimember agency constitute a quorum authorized to act in the name of the agency.

2. "Contested case" means a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.

3. "License" includes the whole or a part of any agency permit, certificate, approval, registration, charter or similar form of permission required by statute.

4. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

5. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

6. "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

7. "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of an existing rule, but does not include:

a. A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

b. A declaratory ruling issued pursuant to section 17A.9, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts.

c. An intergovernmental, interagency, or intra-agency memorandum, directive, manual or other communication which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

d. A determination, decision, or order in a contested case.

e. An opinion of the attorney general.

f. Those portions of staff manuals, instructions or other statements issued by an agency which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would: (1) Enable law violators to avoid detection; or (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the state.

g. A specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, application fee, or other fees.

h. A statement concerning only the physical servicing, maintenance or care of publicly owned or operated facilities or property.

i. A statement relating to the use of a particular publicly owned or operated facility or property, the substance of which is indicated to the public by means of signs or signals.

j. A decision by an agency not to exercise a discretionary power.

k. A statement concerning only inmates of a penal institution, students enrolled in an educational institution, or patients admitted to a hospital, when issued by such an agency.

8. "Rule-making" means the process for adopting, amending, or repealing a rule.

9. "Agency action" includes the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

10. "Agency member" means an individual who is the statutory or constitutional head of an agency, or an individual who is one of several individuals who constitute the statutory or constitutional head of an agency.

[C54, 58, 62, 66, 71, 73, §17A.1; C75, 77, 79, 81, §17A.2]

83 Acts, ch 127, §2; 83 Acts, ch 186, §10005, 10201
Referred to in §17A.3, 22.9, 172D.1, 200.3, 229.23, 262.69, 422.21, 441.21,
441.49, 476A.1, 906.3; C.R. 116

See Code editor's note to section 12.10 at the end of Vol III

17A.3 Public information — adoption of rules — availability of rules and orders.

1. In addition to other requirements imposed by Constitution or statute, each agency shall:

a. Adopt as a rule a description of the organization of the agency which states the general course and method of its operations, and the methods by which and location where the public may obtain information or make submissions or requests.

b. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available to the public, including a description of all forms and instructions that are to be used by the public in dealing with the agency.

c. Make available for public inspection all rules, and make available for public inspection and index by subject, all other written statements of law or policy, or interpretations formulated, adopted or used by the agency in the discharge of its functions. Except as otherwise required by Constitution or statute, or in the use of discovery under the Iowa rules of civil procedure or in criminal cases, an agency shall not be required to make available for public inspection those portions of its staff manuals, instructions or other statements excluded from the definition of "rule" by section 17A.2, subsection 7, paragraph "f".

d. Make available for public inspection and index by name and subject all final orders, decisions and opinions: Provided that to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets, an agency shall delete identifying details when it makes available for public inspection any final order, decision or opinion; however, in each case the justification for the deletion shall be explained fully in writing.

2. No agency rule or other written statement of law or policy, or interpretation, order, decision or opinion is valid or effective against any person or party, nor shall it be invoked by the agency for any purpose, until it has been made available for public inspection and indexed as required by subsection 1, paragraphs "c" and "d". This provision is not applicable in favor of any person or party who has actual timely knowledge thereof and the burden of proving such knowledge shall be on the agency.

[C75, 77, 79, 81, §17A.3]

Referred to in §22.7(15), 217A.18

17A.4 Procedure for adoption of rules.

1. Prior to the adoption, amendment, or repeal of any rule an agency shall:

a. Give notice of its intended action by submitting three copies of the notice to the administrative rules co-ordinator* who shall forward two copies to the Code editor for publication in the "Iowa Administrative Bulletin" created pursuant to section 17A.6. Any notice of intended action shall be published at least thirty-five days in advance of the action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon.

b. Afford all interested persons not less than twenty days to submit data, views or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation. The opportunity for oral presentation must be held at least twenty days after publication of the notice of its time and place in the Iowa administrative bulletin. The agency shall consider fully all written and oral submissions respecting the proposed rule. Within one hundred

eighty days following either the notice published according to the provisions of subsection 1, paragraph "a" or within one hundred eighty days after the last date of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rule-making proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative bulletin. If requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons for overruling considerations urged against the rule.

c. Upon the request of at least two members of the administrative rules review committee publish in the Iowa administrative bulletin an estimate of the economic impact of a proposed rule upon all persons affected by it and upon the agency itself. If the agency determines that such an estimate cannot be formulated the reasons for impossibility of formulation shall be published instead of the estimate. An estimate shall be published at least fifteen days in advance of the adoption, amendment or repeal of the rule. In the case of a rule issued under subsection 2 or made effective under the provisions of section 17A.5, subsection 2, paragraph "b", an estimate, or the reasons for the impossibility of formulating an estimate shall be published within forty-five days of the request.

d. Mail the number of copies of the proposed rule as requested to the state office of a trade or occupational association which has registered its name and address with the agency. The trade or occupational association shall reimburse the agency for the actual cost incurred in providing the copies of the proposed rule under this paragraph. Failure to provide copies as provided in this paragraph shall not be grounds for the invalidation of a rule, unless that failure was deliberate on the part of that agency or the result of gross negligence.

2. When an agency for good cause finds that notice and public participation would be unnecessary, impracticable, or contrary to the public interest, the provisions of subsection 1 shall be inapplicable. The agency shall incorporate in each rule issued in reliance upon this provision either the finding and a brief statement of the reasons therefor, or a statement that the rule is within a very narrowly tailored category of rules whose issuance has previously been exempted from subsection 1 by a special rule relying on this provision and including such a finding and statement of reasons for the entire category. If the administrative rules review committee by a two-thirds vote, the governor or the attorney general files with the Code editor an objection to the adoption of any rule pursuant to this subsection, that rule shall cease to be effective one hundred eighty days after the date the objection was filed. A copy of the objection, properly dated, shall be forwarded to the agency at the time of filing the objection. In any action contesting a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to show that the procedures of subsection 1 were impracticable, unnecessary, or contrary to the public interest and that, if a category of rules was involved, the category was very narrowly tailored.

3. No rule adopted after July 1, 1975, is valid unless adopted in substantial compliance with the above requirements of this section. However, a rule shall be conclusively presumed to have been made in compliance with all of the above procedural requirements of this section if it has not been invalidated on the grounds of noncompliance in a proceeding commenced within two years after its effective date.

4. a. If the administrative rules review committee created by section 17A.8, the governor or the attorney general finds objection to all or some portion of a proposed rule because that rule is deemed to be unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to the agency, the committee, governor or attorney general may, in writing, notify the agency of the objection prior to the effective date of such a rule. In the case of a rule issued under subsection 2, or a rule made effective under the terms of section 17A.5, subsection 2, paragraph "b", the committee, governor or attorney general may notify the agency of such an objection within seventy days of the date such a rule became effective. The committee, governor or the attorney general shall also file a certified copy of such an objection in the office of the Code editor within the above time limits and a notice to the effect that an objection has been filed shall be published in the next issue of the Iowa administrative bulletin and in the Iowa administrative code when that rule is printed in it. The burden of proof shall then be on the agency in any proceeding for judicial review or for enforcement of the rule heard subsequent to the filing to establish that the rule or portion of the rule timely objected to according to the above procedure is not unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to it.

b. If the agency fails to meet the burden of proof prescribed for a rule objected to according to the provisions of paragraph "a" of this subsection, the court shall declare the rule or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. Such court costs shall include a reasonable attorney fee and shall be payable by the state comptroller from the support appropriations of the agency which issued the rule in question.

5. Upon the vote of two-thirds of its members the administrative rules review committee may delay the effective date of a rule seventy days beyond that permitted in section 17A.5, unless the rule was promulgated under section 17A.5, subsection 2, paragraph "b". This provision shall be utilized by the committee only if further time is necessary to study and examine the rule. Notice of an effective date that was delayed under this provision shall be published in the Iowa administrative code and bulletin.

6. The governor may rescind an adopted rule by executive order within thirty-five days of the publication of the rule. The governor shall provide a copy of the executive order to the Code editor who shall include it in the next publication of the Iowa administrative bulletin.

[C66, 71, §17A.6, 17A.7; C73, §17A.6, 17A.7, 17A.17; C75, 77, 79, 81, §17A.4]

83 Acts, ch 142, §9

Referred to in §17A.7, 17A.8, 17A.32, 267.6, 455B.105, 479.29, 519A.4

*See §7.17

Subsection 5: See also 17A.8(9)

17A.5 Filing and taking effect of rules.

1. Each agency shall file in the office of the administrative rules co-ordinator three certified copies of each rule adopted by it. Two copies of each rule shall be forwarded to the Code editor by the administrative rules co-ordinator. The administrative rules co-ordinator shall keep a permanent register of the rules open to public inspection.

2. Each rule hereafter* adopted is effective thirty-five days after filing, as required in this section, and indexing and publication in the Iowa administrative bulletin except that:

a. If a later date is required by statute or specified in the rule, the later date is the effective date.

b. Subject to applicable constitutional or statutory provisions, a rule becomes effective immediately upon filing with the administrative rules co-ordinator, or at a subsequent stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing and publication, if the agency finds:

(1) That a statute so provides;

(2) That the rule confers a benefit or removes a restriction on the public or some segment thereof; or

(3) That this effective date is necessary because of imminent peril to the public health, safety or welfare. In any subsequent action contesting the effective date of a rule promulgated under this paragraph, the burden of proof shall be on the agency to justify its finding. The agency's finding and a brief statement of the reasons therefor shall be filed with and made a part of the rule. Prior to indexing and publication, the agency shall make reasonable efforts to make known to the persons who may be affected by it a rule made effective under the terms of this paragraph.

[C54, 58, 62, §17A.3, 17A.4; C66, 71, 73, §17A.8; C75, 77, 79, 81, §17A.5]

Referred to in §17A.4, 17A.8(9), 17A.32, 267.6, 519A.4

*Act effective July 1, 1975

17A.6 Publications.

1. The Code editor shall cause* the "Iowa Administrative Bulletin" to be published in pamphlet form at least every other week containing the following:

a. Notices of intended action and adopted rules prepared in such a manner so that the text of a proposed or adopted rule shows the text of any existing rule being changed and the change being made.

b. All proclamations and executive orders of the governor which are general and permanent in nature.

c. Other materials deemed fitting and proper by the administrative rules review committee.

2. Subject to the direction of the administrative rules co-ordinator, the Code editor shall cause* the "Iowa Administrative Code" to be compiled, indexed and published in loose-leaf form containing all rules adopted and filed by each agency. The Code editor further shall cause loose-leaf supplements to the Iowa administrative code to be published at least every other week, containing all rules filed for publication in the prior two weeks. The supplements shall be in such form that they may be inserted in the appropriate places in the permanent compilation. The administrative rules co-ordinator shall devise a uniform numbering system for rules and may renumber rules before publication to conform with the system.**

3. The Code editor may omit or cause to be omitted from the Iowa administrative code or bulletin any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency at no more than its cost of reproduction, and if the Iowa administrative code or bulletin contains a notice stating the specific subject matter of the omitted rule and stating how a copy thereof may be obtained.

4. The Iowa administrative code, its supplements, and the Iowa administrative bulletin shall be made available upon request to all persons who subscribe to any of them through the state printing division. Copies of this code so made available shall be kept current by the division.

5. All expenses incurred by the Code editor under this section shall be defrayed under the provisions of section 14.22.

[C54, 58, 62, 66, §14.3, 17A.9; C71, 73, §14.6(5); C75, 77, 79, 81, §17A.6]

Referred to in §17A.4, 207.6

*Superintendent of printing in department of general services, see §18.27(1)

**See also §7.17

17A.7 Petition for adoption of rules.

An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. Within sixty days after submission of a petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rule-making proceedings in accordance with section 17A.4, or issue a rule if it is not required to be issued according to the procedures of section 17A.4, subsection 1.

[C75, 77, 79, 81, §17A.7]

17A.8 Administrative rules review committee.

1. There is created the "Administrative Rules Review Committee." The committee shall be bipartisan and shall be composed of the following members:

a. Three senators appointed by the president of the senate.

b. Three representatives appointed by the speaker of the house.

2. A committee member shall be appointed prior to the adjournment of a regular session convened in an odd-numbered year. The term of office shall be for four years beginning May 1 of the year of appointment. However, a member shall serve until a successor is appointed. A vacancy on the committee shall be filled by the original appointing authority for the remainder of the term. A vacancy shall exist whenever a committee member ceases to be a member of the houses from which the member was appointed.

3. A committee member shall be paid a forty-dollar per diem for each day in attendance and shall be reimbursed for actual and necessary expenses. There is appropriated from money in the general fund not otherwise appropriated an amount sufficient to pay costs incurred under this section.

4. The committee shall choose a chairperson from its membership and prescribe its rules of procedure. The committee may employ a secretary or may appoint the Code editor or a designee to act as secretary.

5. A regular committee meeting shall be held at the seat of government on the second Tuesday of each month. Unless impracticable in advance of each such meeting the subject matter to be considered shall be published in the Iowa administrative bulletin. A special committee meeting may be called by the chairperson at any place in the state and at any time. Unless impracticable, in advance of each special meeting notice of the time and place of such meeting and the subject matter to be considered shall be published in the Iowa administrative bulletin.

6. The committee shall meet for the purpose of selectively reviewing rules, whether proposed or in effect. A regular or special committee meeting shall be open to the public and an interested person may be heard and present evidence. The committee may require a representative of an agency whose rule or proposed rule is under consideration to attend a committee meeting.

7. The committee may refer a rule to the speaker of the house and the president of the senate at the next regular session of the general assembly. The speaker and the president shall refer such a rule to the appropriate standing committee of the general assembly.

8. If the committee finds objection to a rule, it may utilize the procedure provided in section 17A.4, subsection 4. In addition or in the alternative, the committee may include in the referral, under subsection 7, a recommendation that this rule be overcome by statute. If the committee of the general assembly to which a rule is referred finds objection to the referred rule, it may recommend to the general assembly that this rule be overcome by statute. This section shall not be construed to prevent a committee of the general assembly from reviewing a rule on its own motion.

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule until the expiration of forty-five calendar days, excluding legal holidays,* during which the general assembly is in regular session. If a rule is delayed during the last twenty-one calendar days preceding the adoption of a resolution for sine die adjournment of a regular session, the forty-five day period shall begin to run upon the convening of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. If at the expiration of that period the general assembly has not disapproved of the rule by a joint resolution approved by the governor, the rule shall become effective. If a rule is disapproved, it shall not become effective and the agency shall withdraw the rule. This section shall not apply to rules made effective under section 17A.5, subsection 2, paragraph "b."

10. Notwithstanding section 13.7, the committee may employ necessary legal and technical staff.

[C54, 58, 62, §17A.2; C66, 71, 73, §17A.2-17A.4, 17A.10; C75, 77, 79, 81, §17A.8]

Referred to in §17A.4(4)

*See also §4.1(22); 17A.4(5)

17A.9 Declaratory rulings by agencies.

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision, rule or other written statement of law or policy, decision or order of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases.

[C75, 77, 79, 81, §17A.9]

Referred to in §17A.2(7), 17A.15

17A.10 Informal settlements — waiver.

1. Unless precluded by statute, informal settlements of controversies that may culminate in contested case proceedings according to the provisions of this chapter are encouraged. Agencies shall prescribe by rule specific procedures for attempting such informal settlements prior to the commencement of contested case proceedings. This subsection shall not be construed to require either party to such a controversy to utilize the informal procedures or to settle the controversy pursuant to those informal procedures.

2. The parties to a contested case proceeding may, by written stipulation representing an informed mutual consent, waive any provision of this chapter relating to such proceedings. In addition to consenting to such a waiver in individual cases, an agency may, by rule, express its consent to such a waiver as to an entire class of cases.

[C75, 77, 79, 81, §17A.10]

Referred to in §421.17

17A.11 Presiding officer — administrative hearing officers.

1. The presiding officer in evidentiary hearings required to be conducted by an agency according to the provisions of this chapter governing contested cases shall be the agency, one or more members of a multimember agency, or an administrative hearing officer appointed according to the terms of this section. Each agency needing the services of one or more permanent full-time or part-time administrative hearing officers shall appoint as many of them to its staff as are necessary for this purpose. Agencies shall assign administrative hearing officers to cases in rotation unless it is not feasible. Administrative hearing officers shall not perform duties inconsistent with their duties and responsibilities as hearing officers.

2. Administrative hearing officers shall be covered by the merit system of personnel administration, chapter 19A. The Iowa merit employment department or other appropriate agency specified in section 19A.3 shall, insofar as practicable, provide for different classes of administrative hearing officers with different salary scales.

3. An agency whose work load is such that the appointment of a permanent full-time or part-time administrative hearing officer is unwarranted, or an agency whose work load is such that one or more additional administrative hearing officers are temporarily required, may use administrative hearing officers selected by the Iowa merit employment department from other agencies having hearing officers that are temporarily available and that are qualified to preside at the hearings held by the agency requesting the temporary use of a hearing officer. In cases where an agency borrows one or more administrative hearing officers from other agencies, the salaries and expenses

of those administrative hearing officers shall be apportioned and charged to the several agencies according to their use.

[C75, 77, 79, 81, §17A.11]

Referred to in §169.5, 281.6, 421.17

17A.12 Contested cases — notice — hearing — records.

1. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail return receipt requested. However, an agency may provide by rule for the delivery of such notice by other means. Delivery of the notice referred to in this subsection shall constitute commencement of the contested case proceeding.

2. The notice shall include:

a. A statement of the time, place and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

3. If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

4. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

5. Unless precluded by statute, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

6. The record in a contested case shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. Any decision, opinion or report by the officer presiding at the hearing.

7. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision.

8. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

[C75, 77, 79, 81, §17A.12]

Referred to in §17A.13, 17A.15, 361.9, 447A.5, 469.5, 517.30, 421.17, 455B.446, 476A.4

Interpreters in legal proceedings: see ch 822A, 822B

17A.13 Subpoenas — discovery.

1. Agencies have all subpoena powers conferred upon them by their enabling acts or other statutes. In addition, prior to the commencement of a contested case by the notice referred to in section 17A.12, subsection 1, an agency having power to decide contested cases may subpoena books, papers, records and any other real evidence necessary for the agency to determine whether it should institute a contested case proceeding. After the commencement of a contested case, each agency having power to decide contested cases may administer oaths and issue subpoenas in those cases. Discovery procedures applicable to civil actions are available to all parties in contested cases before an agency. Evidence obtained in discovery may be used in the hearing before the agency if that evidence would otherwise be admissible in the agency hearing. Agency subpoenas shall be issued to a party on request. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with the law applicable to the issuance of subpoenas or discovery in civil actions. In proceedings for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in cases of willful failure to comply.

2. An agency that relies on a witness in a contested case, whether or not an agency employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, shall, on request, make such statements or reports available to parties for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by Constitution or statute. Identifiable agency records that are relevant to disputed material facts involved in a contested case, shall, upon request, promptly be made available to a party unless the requested records are expressly exempt from disclosure by Constitution or statute.

[C75, 77, 79, 81, §17A.13]

83 Acts, ch 186, §10006, 10201

Referred to in §421.17

17A.14 Rules of evidence — official notice.

In contested cases:

1. Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

3. Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

5. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

[C75, 77, 79, 81, §17A.14]

Referred to in §421.17

17A.15 Final decisions — proposed decisions — conclusiveness — review by the agency.

1. When the agency presides at the reception of the evidence in a contested case, the decision of the agency is a final decision.

2. When the agency did not preside at the reception of the evidence in a contested case, the presiding officer shall make a proposed decision. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a contested case unless the officer becomes unavailable to the agency. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

3. When the presiding officer makes a proposed decision, that decision then becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the agency, present oral arguments to the agency members who are to render the final decision.

4. This section shall not preclude an agency from instituting a system whereby the proposed decision of a presiding officer in a contested case may be appealed to, or reviewed on motion of, a body consisting of one or more persons that is between the presiding officer and the agency. If an agency institutes such a system of intermediate review, the proposed decision of the presiding officer becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the intermediate reviewing body within the time provided by rule. An intermediate reviewing body may be vested with all or a part of the power which it would have in initially making the decision. A decision of such an intermediate reviewing body is also a proposed decision and

shall become the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. In cases where there is an appeal from a proposed decision rendered by a presiding officer to an intermediate reviewing body, or where such a proposed decision is reviewed on motion of an intermediate reviewing body, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the intermediate reviewing body, present oral arguments to those who are to render the decision.

5. When an appeal from an agency decision in a contested case may be taken to another agency pursuant to statute, or a second agency may according to statute review on its own motion the decision in a contested case by the first agency, the appeal or review shall be deemed a continuous proceeding as though before one agency. A decision of the first agency in such a case is a proposed decision and shall become the final decision without further proceedings unless there is an appeal to, or review on motion of, the second agency within the time provided by statute or rule. In deciding an appeal from or review of a proposed decision of the first agency, the second agency shall have all those powers conferred upon it by statute and shall afford each party an opportunity to file exceptions, present briefs and, with its consent, present oral arguments to agency members who are to render the final decision.

[C75, 77, 79, 81, §17A.15]

Referred to in §86.24, 86.43, 421.17

17A.16 Decisions and orders — rehearing.

1. A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. Parties shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order in the manner provided by section 17A.12, subsection 1.

2. Any party may file an application for rehearing, stating the specific grounds therefor and the relief sought, within twenty days after the issuance of any final decision by the agency in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. Such an application for rehearing shall be deemed to have been denied unless the agency grants the application within twenty days after its filing.

[C75, 77, 79, 81, §17A.16]

Referred to in §17A.12, 86.4, 193.30, 421.17

17A.17 Ex parte communications and separation of functions.

1. Unless required for the disposition of ex parte matters specifically authorized by statute, individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in a con-

tested case, shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any person or party, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

However, without such notice and opportunity for all parties to participate, individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in a contested case may communicate with members of the agency, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties.

2. Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in that contested case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules. The agency's rules may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceeding. As sanctions for violations, the rules may provide for a decision against a party who violates the rules; for censuring, suspending or revoking a privilege to practice before the agency; and for censuring, suspending or dismissing agency personnel.

3. No individual who participates in the making of any proposed or final decision in a contested case shall have prosecuted or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties. Nor shall any such individual be subject to the authority, direction or discretion of any person who has prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties.

4. A party to a contested case proceeding may file a timely and sufficient affidavit asserting disqualification according to the provisions of subsection 3, or asserting personal bias of an individual participating in the making of any proposed or final decision in that case. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

[C75, 77, 79, 81, §17A.17]

Referred to in §86.17, 421.17, 601A.15, 601G.9

17A.18 Licensees.

1. When the grant, denial, or renewal of a license is required by Constitution or statute to be preceded by notice and opportunity for an evidentiary hearing, the provisions of this chapter concerning contested cases apply.

2. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking judicial review of the agency order or a later date fixed by order of the agency or the reviewing court.

3. No revocation, suspension, annulment or withdrawal, in whole or in part, of any license is lawful unless, prior to the institution of agency proceedings, the agency gave written, timely notice by personal service as in civil actions or by restricted certified mail to the licensee of facts or conduct and the provisions of law which warrant the intended action, and the licensee was given an opportunity to show, in an evidentiary hearing conducted according to the provisions of this chapter for contested cases, compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

[C75, 77, 79, 81, §17A.18]

Referred to in §80.14, 421.17, 542.10

17A.19 Judicial review.

Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action. However, nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the right to seek relief from such action in the courts.

1. A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter. When agency action is pursuant to rate regulatory powers over public utilities or common carriers and the aggravement or adverse effect is to the rates or charges of a public utility or common carrier, the agency action shall not be final until all agency remedies have been exhausted and a decision prescribing rates which satisfy the requirements of those provisions of the Code has been rendered. A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy. If a declaratory ruling has not been rendered within thirty days after the filing of a petition therefor under section 17A.9, or if the agency declines to issue such a declaratory ruling after receipt of a petition therefor, any administrative remedy available under section 17A.9 shall be deemed inadequate or exhausted.

2. Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of busi-

ness. When a proceeding for judicial review has been commenced, a court may, in the interest of justice, transfer the proceeding to another county where the venue is proper. Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency. A mailing shall be addressed to the parties or their attorney of record at their last known mailing address. Proof of mailing shall be by affidavit. Any party of record in a contested case before an agency wishing to intervene and participate in the review proceeding must file an appearance within forty-five days from the time the petition is filed.

3. If a party files an application under section 17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application under section 17A.16, subsection 2, for rehearing, the petition must be filed within thirty days after the issuance of the agency's final decision in that contested case. If an application for rehearing is granted, the petition for review must be filed within thirty days after the issuance of the agency's final decision on rehearing. In cases involving a petition for judicial review of agency action other than the decision in a contested case, the petition may be filed at any time petitioner is aggrieved or adversely affected by that action.

4. The petition for review shall name the agency as respondent and shall contain a concise statement of:

- The nature of the agency action which is the subject of the petition.
- The particular agency action appealed from.
- The facts on which venue is based.
- The grounds on which relief is sought.
- The relief sought.

5. The filing of the petition for review does not itself stay execution or enforcement of any agency action. Upon application the agency or the reviewing court may, in appropriate cases, order such a stay pending the outcome of the judicial review proceedings.

6. Within thirty days after filing of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of any contested case which may be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

7. In proceedings for judicial review of agency action a court may hear and consider such evidence as

it deems appropriate. In proceedings for judicial review of agency action in a contested case, however, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by Constitution or statute to the agency in that contested case proceeding. Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

8. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant any other appropriate relief from the agency action, equitable or legal and including declaratory relief, if substantial rights of the petitioner have been prejudiced because the agency action is:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the agency;
- c. In violation of an agency rule;
- d. Made upon unlawful procedure;
- e. Affected by other error of law;
- f. In a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or
- g. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

[C75, 77, 79, 81, §17A.19; 81 Acts, ch 24, §1, 2]
 Referred to in §21.6, 22.8, 22.10, 90.42, 90.6, 99A.6, 109.15, 152.37, 258A.6, 261B.3, 368.22, 601A.17, R.C.P. 332, 333

17A.20 Appeals.

An aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the district court under this chapter by appeal. The appeal shall be taken as in other civil cases, although the appeal may be taken regardless of the amount involved.

[C75, 77, 79, 81, §17A.20]
 83 Acts, ch 186, §10007, 10201
 Referred to in §252.27

17A.21 Inconsistency with federal law.

If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available to an agency of this state, or would otherwise be inconsistent with requirements of federal law, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds or services or to eliminate the inconsistency with federal requirements. If the attorney general makes such a suspension determina-

tion, the attorney general shall report it to the general assembly at its next session. This report shall include any recommendations in regard to corrective legislation needed to conform this chapter with the federal law.

[C75, 77, 79, 81, §17A.21]

17A.22 Agency authority to implement chapter.

Agencies shall have all the authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise.

[C75, 77, 79, 81, §17A.22]

17A.23 Construction.

Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in addition to those created or imposed by every other statute now* in existence or hereafter* enacted. If any other statute now* in existence or hereafter* enacted diminishes any right conferred upon a person by this chapter or diminishes any requirement imposed upon an agency by this chapter, this chapter shall take precedence unless the other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter.

The Iowa administrative procedure Act shall be construed broadly to effectuate its purposes. This chapter shall also be construed to apply to all agencies not expressly exempted by this chapter or by another statute specifically referring to this chapter by name; and except as to proceedings in process on July 1, 1975, this chapter shall be construed to apply to all covered agency proceedings and all agency action not expressly exempted by this chapter or by another statute specifically referring to this chapter by name.

[C75, 77, 79, 81, §17A.23]

*Act effective July 1, 1975

17A.24 to 17A.30 Reserved.

17A.31 Small business regulatory flexibility analysis.

1. For the purpose of this section, "small business" means a business entity organized for profit, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which the following apply:

a. It is not an affiliate or subsidiary of a business dominant in its field of operation.

b. It has either twenty or fewer full-time equivalent positions or not more than the equivalent of one million dollars in annual gross revenues in the preceding fiscal year.

c. It does not involve the operation of a farm and does not involve the practice of a profession.

For purposes of this definition, "dominant in its field of operation" means having more than twenty full-time equivalent positions and more than one million dollars in annual gross revenues, and "affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

2. If an agency proposes a rule which may have an impact on small business, the agency shall comply with the additional notice provisions of subsection 3 and the analysis requirements of subsection 4.

3. The agency shall include in its notice in the Iowa administrative bulletin that the proposed rule-making may have an impact on small business. The agency shall notify those small businesses or organizations of small businesses who have registered with the agency requesting notification. An agency shall issue a regulatory flexibility analysis of a proposed rule if, within twenty days after the published notice of proposed rule adoption, a written request for the analysis is filed with the appropriate agency by the administrative rules review committee, the governor, a political subdivision, at least twenty-five persons signing the request, who qualify as a small business, or a registered organization representing at least twenty-five persons.

4. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small business:

a. Establishing less stringent compliance or reporting requirements in the rule for small business.

b. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

c. Consolidating or simplifying the rule's compliance or reporting requirements for small business.

d. Establishing performance standards to replace design or operational standards in the rule for small business.

e. Exempting small business from any or all requirements of the rule.

f. The nature of any reports and the estimated cost of their preparation by small businesses which would be required to comply with the rule.

g. The nature and estimated cost of other measures or investments that would be required by small businesses to comply with the rule.

h. The nature and estimated cost of any professional, legal, consulting or accounting services which small businesses would incur to comply with the rule.

i. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.

j. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

k. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

l. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons they were rejected in favor of the proposed rule.

A concise summary of the regulatory flexibility analysis must be published in the Iowa administrative bulletin twenty days prior to the adoption of the proposed rule. The summary shall contain the place where and the time when interested persons may make an oral presentation on the analysis; and where persons may obtain a full text of the analysis for the cost of reproduction. If the agency has made a good faith effort to comply with the requirements of subsections 3 and 4, the rule may not be invalidated on the ground that the contents of the regulatory flexibility analysis are insufficient or inaccurate.

5. The agency shall reduce the impact by using a method provided or requested under subsection 4 if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rule.

84 Acts, ch 1007, §1

Referred to in §17A.32, 17A.33

17A.32 Time limit applicable to emergency rules.

A rule of an emergency nature adopted under section 17A.4, subsection 2, or made effective under the provisions of section 17A.5, subsection 2, paragraph b, is not subject to the provisions of section 17A.31 until ninety days have elapsed from the day of the emergency rule's publication. If subsections 3 and 4 of section 17A.31 have not been complied with within this ninety-day period, the rule is void.

84 Acts, ch 1007, §2

See Code editor's note at the end of Vol III

17A.32 Review by administrative rules review committee.

The administrative rules review committee shall review existing rules, as time permits, to determine if there are adverse or beneficial effects from these rules. The committee shall give a high priority to rules that are referred to it by small business as defined in section 17A.31. The review of these rules shall be forwarded to the appropriate standing committees of the house and senate.

84 Acts, ch 1007, §3

See Code editor's note at the end of Vol III

under any other provision of law such employees may be entitled to credit the period of such assignment toward benefits as employees of the sending agency.

4. An employee who participates in an exchange under the terms of this section who suffers disability or death as a result of personal injury arising out of and in the course of an exchange, or sustained in performance of duties in connection therewith, shall be treated, for the purposes of the sending agency's employee compensation program, as an employee, as defined in such Act, who has sustained such injury in the performance of such duty, but shall not receive benefits under that Act for any period for which the employee is entitled to and elects to receive similar benefits under the receiving agency's employee compensation program.

[C66, 71, 73, 75, 77, 79, 81, §28D.4]

28D.5 Travel expenses.

A sending agency in this state may, in accordance with the travel regulations of such agency, pay the travel expenses of employees assigned to a receiving agency on either a detail or leave basis, but shall not pay the travel expenses of such employees incurred in connection with their work assignment at the receiving agency. If the assignment or detail will be for a period of time exceeding eight months, travel expenses may include expenses of transportation of immediate family, household goods, and personal effects to and from the location of the receiving agency. If the period of assignment is less than eight months, the sending agency may pay a per diem allowance to the employee on assignment or detail.

[C66, 71, 73, 75, 77, 79, 81, §28D.5]

28D.6 Status of certain employees.

1. When any unit of government of this state acts as a receiving agency, employees of the sending agency who are assigned under authority of this chapter may be given appointments in the receiving agency covering the periods of such assignments, with compensation to be paid from receiving agency funds or without compensation, or be considered to be on detail to the receiving agency.

2. Appointments of persons so assigned shall be made without regard to the laws or regulations governing the selection of employees of the receiving agency.

3. Employees who are detailed to the receiving agency shall not by virtue of such detail be considered to be employees thereof, except as provided in subsection 4. The supervision and the duties of such employees, as well as the contribution of each agency to the salary or wage of such employees during the period of detail, may be determined by agreement between the sending agency and the receiving agency. The agreement shall be subject to the approval of the executive council for state participation and the local governing body in the case of an agreement involving a political subdivision of the state.

Any employee of a sending agency assigned in this state who suffers disability or death as a result of personal injury arising out of and in the course of such assignment, or sustained in the performance of duties in connection therewith, shall be treated for the purpose of receiving agency's employee compensation program, as an employee, as defined in such Act, who has sustained such injury in the performance of such duty, but shall not receive benefits under that Act for any period for which the employee elects to receive similar benefits as an employee under the sending agency's employee compensation program.

[C66, 71, 73, 75, 77, 79, 81, §28D.6]

28D.7 Travel expenses.

A receiving agency in this state may, in accordance with the travel regulations of such agency, pay travel expenses of persons assigned thereto under this chapter during the period of such assignments on the same basis as if they are regular employees of the receiving agency.

[C66, 71, 73, 75, 77, 79, 81, §28D.7]

28D.8 Administration.

The Iowa merit employment department is hereby directed to explore means of implementing this chapter and to assist departments, agencies, and instrumentalities of the state and its political subdivisions in participating in employee interchange programs.

[C66, 71, 73, 75, 77, 79, 81, §28D.8]

CHAPTER 28E

JOINT EXERCISE OF GOVERNMENTAL POWERS

Referred to in §15.190, 22.12, 28C.5, 28E.1, 28F.1, 28G.5,

28H.4, 28H.6, 32.20, 32.21, 37B.41,

138C.2, 174.15, 217.8, 217A.10, 217A.11,

278.1, 300.1, 309.10, 321.304, 331.751,

331.770, 357B.3, 359.42, 361.3, 364.3, 364.70, 387.4, 392.4, 422A.2,

402.10, 455B.134(3), 455B.144, 455B.171(1), 455D.174(4), 455D.304, 455D.325, 455D.10,

467B.04, 476A.12

28E.1 Purpose.
28E.2 Definitions.
28E.3 Joint exercise of powers.

28E.4 Agreement with other agencies.
28E.5 Specifications.
28E.6 Additional provisions.

28E.7	Obligations not excused.
28E.8	Filing and recording.
28E.9	Status of interstate agreement.
28E.10	Approval of statutory officer.
28E.11	Agency to furnish aid.
28E.12	Contract with other agencies.
28E.13	Powers are additional to others.
28E.14	No limitation on contract.
28E.15	District agency.
28E.16	Election for bonds.
28E.17	Transit policy — joint agreement — city debt.
28E.18	Shared use of facilities.
28E.19	Joint county indigent defense fund.
28E.20	Reserved.

UNIFIED LAW ENFORCEMENT

28E.21	Definition.
28E.22	Referendum for tax.
28E.23	Budget.
28E.24	Revenue and tax levies.
28E.25	Expansion of district.
28E.26	City civil service and retirement.
28E.27	Duration of agreements for law enforcement purposes.
28E.28	Public safety commission.
28E.28A	Referendum on tax levy — dissolution of district.
28E.29	Amana — additional law enforcement.

28E.1 Purpose.

The purpose of this chapter is to permit state and local governments in Iowa to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies and to co-operate in other ways of mutual advantage. This chapter shall be liberally construed to that end.

[C66, 71, 73, 75, 77, 79, 81, §28E.1]

28E.2 Definitions.

For the purposes of this chapter, the term "public agency" shall mean any political subdivision of this state; any agency of the state government or of the United States; and any political subdivision of another state. The term "state" shall mean a state of the United States and the District of Columbia. The term "private agency" shall mean an individual and any form of business organization authorized under the laws of this or any other state.

[C66, 71, 73, 75, 77, 79, 81, §28E.2]

Referred to in §28E.2, 28G.2, 217A.71, 361.1, 406B.301
See also §28F.2

28E.3 Joint exercise of powers.

Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having such power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

[C66, 71, 73, 75, 77, 79, 81, §28E.3]

28E.4 Agreement with other agencies.

Any public agency of this state may enter into an agreement with one or more public or private agencies for joint or co-operative action pursuant to the provisions of this chapter, including the creation of a separate entity to carry out the purpose of the agreement. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies involved shall be necessary before any such agreement may enter into force.

[C66, 71, 73, 75, 77, 79, 81, §28E.4]

28E.5 Specifications.

Any such agreement shall specify the following:

1. Its duration.
2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.
3. Its purpose or purposes.
4. The manner of financing the joint or co-operative undertaking and of establishing and maintaining a budget therefor.
5. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
6. Any other necessary and proper matters.

[C66, 71, 73, 75, 77, 79, 81, §28E.5]

28E.6 Additional provisions.

If the agreement does not establish a separate legal entity to conduct the joint or co-operative undertaking, the agreement shall also include:

1. Provision for an administrator or a joint board responsible for administering the joint or co-operative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.
2. The manner of acquiring, holding and disposing of real and personal property used in the joint or co-operative undertaking.

[C66, 71, 73, 75, 77, 79, 81, §28E.6]

Referred to in §28E.28

28E.7 Obligations not excused.

No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility.

[C66, 71, 73, 75, 77, 79, 81, §28E.7]

28E.8 Filing and recording.

Before entry into force, an agreement made pursuant to this chapter shall be filed with the secretary of state and recorded with the county recorder.

[C66, 71, 73, 75, 77, 79, 81, §28E.8]

28E.9 Status of interstate agreement

If an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States said agreement shall have the status of an interstate compact. Such agreements shall, before entry into force, be approved by the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state.

In any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest, and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

[C66, 71, 73, 75, 77, 79, 81, §28E.9]

28E.10 Approval of statutory officer.

If an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved as to all matters within the state officer's or agency's jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §28E.10]

28E.11 Agency to furnish aid.

Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or co-operative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

[C66, 71, 73, 75, 77, 79, 81, §28E.11]

28E.12 Contract with other agencies.

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

[C66, 71, 73, 75, 77, 79, 81, §28E.12]

28E.13 Powers are additional to others.

The powers granted by this chapter shall be in addition to any specific grant for intergovernmental agreements and contracts.

[C66, 71, 73, 75, 77, 79, 81, §28E.13]

28E.14 No limitation on contract.

Any contract or agreement authorized by this chapter shall not be limited as to period of existence,

except as may be limited by the agreement or contract itself.

[C66, 71, 73, 75, 77, 79, 81, §28E.14]

28E.15 District agency.

A planning commission, council of governments or similar organization formed under the provisions of this chapter shall, upon designation as such by the governor, serve as a district, regional or metropolitan agency for comprehensive planning for its area for the purpose of carrying out the functions as defined for such agency by federal, state and local laws and regulations.

[C73, 75, 77, 79, 81, §28E.15]

28E.16 Election for bonds.

When bonds which require a vote of the people are to be issued for financing joint facilities of a county and one or more cities within the county, pursuant to an agreement made under the authority of this chapter, or pursuant to other provisions of law, the board of supervisors and the council of each city shall arrange for a single election on the question of issuing the bonds, but if the county and the cities are proposing to make separate bond issues, the ballot shall contain separate questions, one to be voted upon by all voters of the county, and one or more to be voted upon only by the voters of the city which is to make a separate bond issue.

[C75, 77, 79, 81, §28E.16]

28E.17 Transit policy — joint agreement — city debt.

1. It is the public policy of this state to encourage the establishment or acquisition of urban mass transit systems and the equipment, maintenance and operation thereof by public agencies in co-operation with, and with the assistance of the urban mass transportation administration of the United States department of transportation, pursuant to the provisions of the Urban Mass Transportation Act of 1964, as amended, Title 49, sections 1601 et seq., United States Code, which requires unification or official co-ordination of local mass transportation services on an area-wide basis as a condition of such assistance.

2. An agreement between one or more cities and other public agencies for this purpose may be made and carried out without an election and the agency created thereby may jointly exercise through a board of trustees as provided by the agreement all the rights, powers, privileges and immunities of cities related to the provision of mass transportation services, except the authority to incur bonded indebtedness.

3. A city which is a party to a joint transit agency may issue general corporate purpose bonds for the support of a capital program for the joint agency in the following manner:

a. The council shall give notice and conduct a hearing on the proposal in the manner set forth in section 384.25. However, the notice must be published at least ten days prior to the hearing, and if a petition valid under section 362.4 is filed with the clerk of the city prior to the hearing, asking that the question of issuing the bonds be submitted to the qualified electors of the city, the council shall either by resolution declare the proposal abandoned or shall direct the

county commissioner of elections to call a special election to vote upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in section 384.26.

b. If no petition is filed, or if a petition is filed and the proposition of issuing bonds is approved at the election, the council may proceed with the authorization and issuance of the bonds.

An agreement may provide for full or partial payment from transit revenues to the cities for meeting debt service on such bonds.

This subsection shall be construed as granting additional power without limiting the power already existing in cities, and as providing an alternative independent method for the carrying out of any project for the issuance and sale of bonds for the financing of a city's share of a capital expenditures project of a joint transit agency, and no further proceedings with respect to the authorization of the bonds shall be required.

[C75, §28G.1-28G.4; C77, 79, 81, §28E.17]

28E.18 Shared use of facilities.

Before proceeding to construct or purchase a facility as otherwise provided by law, a public agency shall inquire of other public agencies having facilities within the same general geographic area concerning the availability of all or part of those facilities for rent or sharing by agreement with the inquiring public agency. If there are no suitable facilities available for rent or sharing, the governing body of the public agency shall record its findings in its meeting minutes.

83 Acts, ch 26, §1

28E.19 Joint county indigent defense fund.

Two or more counties may execute an agreement under this chapter to create a joint county indigent defense fund to be used to compensate attorneys appointed to represent indigents under section 815.10 when funds budgeted for that purpose are exhausted. In addition to other requirements of an agreement under this chapter, the agreement shall provide for the amount to be paid by each county based on its population to establish and maintain an appropriate balance in the joint fund, and for a method of repayment if a county withdraws more funds than it has contributed.

83 Acts, ch 123, §36, 209; 84 Acts, ch 1067, §10
Referred to in §331.424

28E.20 Reserved.

UNIFIED LAW ENFORCEMENT

28E.21 Definition.

For the purpose of this division, the term "district" means a unified law enforcement district established by an agreement under the provisions of this chapter by a county, or portions thereof, or cities to provide law enforcement within the boundaries of the member political subdivisions.

[C77, 79, 81, §28E.21]
Referred to in §331.381, 331.425

28E.22 Referendum for tax.

The board of supervisors, or the city councils of a district composed only of cities, may, and upon receipt of a petition signed by five percent of the qualified electors residing in the district shall, submit a proposition to the electorate residing in the district at any general election or at a special election held throughout the district. The proposition shall provide for the establishment of a public safety fund and the levy of a tax on taxable property located in the district at rates not exceeding the rates specified in this section for the purpose of providing additional moneys for the operation of the district.

The ballot for the election shall be prepared in substantially the form for submitting special questions at general elections and the form of the proposition shall be substantially as follows:

"Shall an annual levy, the amount of which will not exceed a rate of one dollar and fifty cents per thousand dollars of assessed value of the taxable property in the unified law enforcement district be authorized for providing additional moneys needed for unified law enforcement services in the district?"

Yes ☐ No ☐

If a majority of the qualified electors in each city and the unincorporated area of the county voting on the proposition approve the proposition, the county board of supervisors for unincorporated area and city councils for cities are authorized to levy the tax as provided in section 28E.23.

Such moneys collected pursuant to the tax levy shall be expended only for providing additional moneys needed for unified law enforcement services in the district and shall be in addition to the revenues raised in the county and cities in the district from their general funds which are based upon an average of revenues raised for law enforcement purposes by the county or city for the three previous years. The amount of revenues raised for law enforcement purposes by the county for the three previous years shall be computed separately for the unincorporated portion of the district and for each city in the district.

[C77, 79, 81, §28E.22]

83 Acts, ch 79, §1

Referred to in §28E.24, 28E.26, 331.381, 331.425

28E.23 Budget.

The public safety commission, on or before January 10 of each year, shall make an estimate of the total amount of revenue deemed necessary for operation of the district and, in conjunction with the county board of supervisors and city councils in the district, determine the amounts which will be contributed by the county and by each city in the district from its general fund which are based upon an average of revenues raised for law enforcement purposes in the county or city for the three previous years.

One of the following methods shall be used by the public safety commission for computing the amount of revenue deemed necessary for the operation of the district:

1. The per capita cost shall be computed by dividing the amount of revenue deemed necessary for the operation of the district by the total population of the district and by computing separate amounts for the public safety fund as follows:

a. The funds to be contributed by each city in the district shall be computed by multiplying the per cap-

its cost by the population residing in each city of the district.

b. The funds to be contributed by the unincorporated area of the district shall be computed by multiplying the per capita cost by the population residing in the unincorporated area of the district.

2. The percent of service received by the unincorporated area and by each city in the district shall be computed and the percent of service received by each shall be multiplied by the amount of revenue deemed necessary for the operation of the district.

[C77, 79, 81, §28E.23]

83 Acts, ch 123, §37, 209

Referred to in §28E.22, 331.381, 331.425

28E.24 Revenue and tax levies.

The county board of supervisors shall certify to the public safety commission the amount of revenue from the county general fund credited to the unincorporated area in the district based upon an average of revenues raised for law enforcement purposes in the unincorporated area for the three previous years. The public safety commission shall subtract this amount from the amount of revenue to be contributed by the unincorporated area. The difference is the amount of additional revenue needed for unified law enforcement purposes.

In addition, the county board of supervisors and the city council of each city in the district shall certify to the public safety commission the amounts of revenue from the county and from the city general fund credited to each city in the district based upon an average of revenues raised for law enforcement purposes in each city for the three previous years. The public safety commission shall subtract the total of these amounts from the amount of revenue to be contributed by each city respectively. The difference for each city is the amount of additional revenue needed for unified law enforcement purposes.

The county board of supervisors and the council of each city located within the district shall review the proposed budget and upon the approval of the budget by the board of supervisors and all city councils in the district, each governing body shall determine the source of the additional revenue needed for unified law enforcement purposes. If the tax levy is approved as the source of revenue, the governing body shall certify to the county auditor the amount of revenue to be raised from the tax levy in either the unincorporated area of the district or a city in the district.

If the tax rate in any of the cities or the unincorporated area exceeds the limitations prescribed in section 28E.22, the public safety commission shall revise the budget to conform with the tax limitations.

The county board of supervisors and the city council of each city in the district shall deposit in the public safety fund the amount of revenue certified to the public safety commission in this section based upon an average of revenues raised for law enforcement purposes for the three previous years.

If the average of revenues raised for law enforcement purposes in the unincorporated area or a city for the previous three years exceeds the amount of revenue needed for unified law enforcement purposes, the unincorporated area or city is only required to contribute the amount of revenue needed.

Taxes collected pursuant to the tax levies and other moneys received from the county and cities in the district shall be placed in a public safety fund and used only for the operation of the district. Any unencumbered funds remaining in the fund at the end of a fiscal year shall carry over to the next fiscal year and may be used for the operation of the district.

[C77, §28E.23; C79, 81, §28E.24]

83 Acts, ch 123, §38, 39, 209

Referred to in §28E.28A, 331.381, 331.425

28E.25 Expansion of district.

Cities and unincorporated areas may join an established district upon the affirmative vote of the city council or county board of supervisors, whichever is applicable, and a tax may be levied for providing additional moneys for unified law enforcement services only upon the affirmative vote of qualified electors of the city or unincorporated area voting in the manner provided in this division. A city or unincorporated area joining a district shall contract with the district for services until the beginning of a fiscal year when the city or unincorporated area may become a member.

[C77, §28E.24; C79, 81, §28E.25]

Referred to in §331.381, 331.425

28E.26 City civil service and retirement.

The inclusion of a city in a unified law enforcement district shall not affect the prior establishment of a civil service system under chapter 400 or a pension or retirement system under either chapter 410 or 411.

[C77, §28E.25; C79, 81, §28E.26]

Referred to in §331.381, 331.425

28E.27 Duration of agreements for law enforcement purposes.

An agreement under this chapter to provide joint or co-operative services or facilities for unified law enforcement purposes shall not be executed for less than a five-year period.

[C77, §28E.26; C79, 81, §28E.27]

Referred to in §331.381, 331.425

28E.28 Public safety commission.

If the levy of a tax has been approved under section 28E.22, a public safety commission shall be established under section 28E.6. The public safety commission shall be responsible for administering the unified law enforcement agreement. The public safety commission shall be composed of elected officials from public agencies party to the agreement. The composition of the commission shall be determined by the terms of the agreement. A vacancy shall exist when a member of the commission ceases to hold the elected office which qualifies the member for commission membership.

[C79, 81, §28E.28]

Referred to in §331.381

28E.28A Referendum on tax levy — dissolution of district.

1. After five years from the date that a district is established, the public safety commission, upon receipt of a petition signed by fifteen percent of the qualified electors residing in the district, shall submit a proposition to the electorate of the district at the next general election to discontinue the annual levy

for unified law enforcement services in the district. If a majority of the qualified electors in each city and the unincorporated area of the county, as applicable, approve the proposition, the tax levy shall be discontinued.

2. If the discontinuation of the tax levy necessitates the dissolution of the district, the public safety commission shall dispose of any remaining property, the proceeds of which shall be applied first against any outstanding obligations of the district and any balance shall be remitted to the county and each city in the district in the same proportion that each jurisdiction contributed to the district's budget in its final fiscal year. The board of supervisors, on behalf of the unincorporated area of the county and the city councils of the cities included in the dissolved district shall continue to levy taxes and appropriate funds to the public safety fund as provided in section 28E.24 until all outstanding obligations of the dissolved district are paid.

83 Acts, ch 79, §2

Referred to in §331.381

28E.29 Amana — additional law enforcement.

If a tract of land is owned by a corporation organized under chapter 491 with assets of the value of one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land, all of the territory within the plats of the villages with their additions or subdivisions, for the purposes of this section, is deemed to be one incorporated city. The corporation may assess and collect funds from its property owners for the purpose of obtaining additional law enforcement services from the county sheriff. The corporation may contract under this chapter with the county sheriff for additional law enforcement services.

[C81, §337.22; S81, §28E.29; 81 Acts, ch 117, §1201]

CHAPTER 28F

JOINT FINANCING OF PUBLIC WORKS AND FACILITIES

Referred to in §390.5, 427.1, 428.31

- 28F.1 Scope of chapter.
- 28F.2 Definitions.
- 28F.3 Revenue bonds.
- 28F.4 Use of proceeds — negotiability.
- 28F.5 Source of payment — rates and charges, pledge of revenues.
- 28F.6 Bonds not debts of the public agencies.

- 28F.7 Construction and operation of project.
- 28F.8 Details of revenue bonds.
- 28F.9 Issuance of interim notes.
- 28F.10 Refunding bonds.
- 28F.11 Eminent domain.
- 28F.12 Additional powers of the entity.
- 28F.13 Laws applicable.

28F.1 Scope of chapter.

This chapter provides a means for the joint financing by public agencies of works or facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, and industrial waste, also electric power facilities constructed within the state of Iowa except that hydroelectric power facilities may also be located in the waters and on the dams of or on land adjacent to either side of the Mississippi or Missouri river bordering the state of Iowa, water supply systems, swimming pools or golf courses. This chapter applies to the acquisition, construction, reconstruction, ownership, operation, repair, extension, or improvement of such works or facilities, by a separate administrative or legal entity created pursuant to chapter 28E. When the legal entity created under this chapter is comprised solely of cities, counties, and sanitary districts established under chapter 355, or any combination thereof or any combination of the foregoing with other public agencies, the entity shall be both a corporation and a political subdivision with the name under which it was organized. The legal

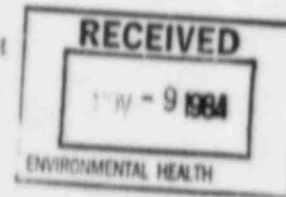
entity may sue and be sued, contract, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the seal at pleasure, and execute all the powers conferred in this chapter.

A city shall not join an entity created under this chapter for the purpose of financing electric power facilities unless that city owned and operated a municipal electric utility as of July 1, 1981. Power supplied by a municipal power agency may not be furnished to a municipal utility not existing as of July 1, 1981.

After July 1, 1981, a city shall not join an entity created under this chapter or any separate administrative or legal entity created pursuant to chapter 28E for the purpose of utilizing the provisions of this chapter for financing electric power facilities until the proposal for the city to join such an entity has been submitted to and approved by the voters of the city.

The proposal shall be submitted at any city election by the council on its own motion. If a majority of those voting in the city does not approve the proposal, the same or a similar proposal may be submitted to the

INTERAGENCY AGREEMENT
BETWEEN
IOWA STATE DEPARTMENT OF HEALTH
AND
IOWA BUREAU OF LABOR



The Iowa State Department of Health and the Iowa Bureau of Labor enter into this interagency agreement pursuant to the authority of Iowa Code sections 28E.4 and 136C.2.

The purpose of this agreement is to avoid duplication and promote coordination of radiation protection activities; aid in the uniform regulation of the installation, use and operation of radiation emitting equipment from radiological health and safety standpoint relating to the exposure of employees; and to assure timely investigations of all potentially hazardous situations resulting from radiation emitting equipment.

Delineation of Agency Responsibilities

This document applies to all areas of regulation and radiation emitting equipment in which the Iowa State Department of Health and the Iowa Bureau of Labor have mutual responsibilities.

The Iowa State Department of Health is responsible under Iowa Code chapter 136C for registering, inspecting, and setting standards for radiation emitting equipment, its installation, operation and use and of establishing minimum training standards for operators. In implementing this act, the Iowa State Department of Health has established rules relating to the prescribing of radiation safety criteria for facilities, equipment and the operation of equipment. These rules are enforced through a program of registering the possession of radiation emitting equipment, inspecting facilities to assure adherence to the safety standards and the collection of fees.

The Iowa Bureau of Labor is responsible for the enforcement of the Iowa Occupational Safety and Health Act within the State of Iowa. Iowa Code chapter 88 authorizes the Iowa Bureau of Labor to establish and enforce mandatory occupational safety and health standards, including those for radiation safety.

Agreement

It is hereby agreed that each of the affected agencies will conduct the following functions.

Iowa State Department of Health

1. Register, inspect and otherwise regulate the possession of radiation emitting equipment in accordance with Iowa Code chapter 136C as implemented by radiation emitting equipment rules [478-Title IV (136C) IAC].
2. Report to the Iowa Bureau of Labor all apparent violations of occupational safety and health regulations relating to employee exposure to radiation emitting equipment in addition to obtaining correction under Iowa Code chapter 136C.

3. When requested by the Iowa Bureau of Labor, assist personnel from the Iowa Bureau of Labor in the conduct of inspections performed by the Iowa Bureau of Labor relating to radiation emitting equipment.

Iowa Bureau of Labor

1. Review results of Iowa State Department of Health inspections involving violations of the Occupational Safety and Health Act, Iowa Code chapter 88, and advise the Iowa State Department of Health of additional actions which are necessary under the Iowa Bureau of Labor authority.

2. Request the Iowa State Department of Health to assist in conducting inspections of facilities in accordance with Iowa Bureau of Labor procedures where such facilities are violating the Iowa Occupational Safety and Health Act and implementing rules.

Reporting

The Iowa State Department of Health, Environmental Health Section, Radiological Health Unit will provide the Iowa Bureau of Labor with field inspection reports of all radiation facilities where violations of OSHA have been found to exist and which have not been corrected in accordance with Iowa Code chapter 136C.

Evaluation of Agreement

The agreement will be reviewed annually and plans developed for revisions as necessary.

Funding

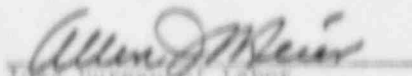
No exchange of funds or payments for services is included in this agreement. No property will be jointly acquired, held or disposed under the terms of this agreement.

Liaison Designations

John A. Euse, Iowa State Department of Health. Walter H. Johnson, Iowa Bureau of Labor.

This agreement is subject to annual review and may be terminated within sixty (60) days by written notice by either party.


Norman L. Cowdrey
Iowa State Department of Health
Commissioner


Allen J. Meier
Iowa Bureau of Labor
Commissioner

7-23-84
Date

7-31-84
Date

INTERAGENCY AGREEMENT
BETWEEN
IOWA STATE DEPARTMENT OF HEALTH
AND
IOWA DEPARTMENT OF TRANSPORTATION

The Iowa State Department of Health and the Iowa Department of Transportation, enter into this interagency agreement pursuant to the authority of Section 28E.4, The Code.

The purpose of this agreement is to avoid duplication and promote coordination of radiation protection activities.

Delineation of Agency Responsibilities

This document applies to transportation by motor carrier of radioactive material in which the Iowa State Department of Health and the Iowa Department of Transportation have mutual responsibilities.

The Iowa State Department of Health is responsible under Chapter 136C, The Code, for licensing, inspection and setting standards for radioactive material, and its installation, operation and use. In implementing this act, the Iowa State Department of Health has established rules [470-Title IV (136C) IAC] relating to the describing of radiation safety criteria for facilities and radioactive material. These rules are enforced through a program of licensing radioactive material and inspecting facilities to assure adherence to the safety standards and the collection of fees. Under this law a license from the Iowa State Department of Health is required for the use, manufacture, production, distribution, sale, transport, transfer, installation, repair, receipt, acquisition, ownership or possession of any radioactive material except as exempted under 470 Title IV (136C) IAC.

The Iowa Department of Transportation, in addition to other duties and authorities, is responsible for the enforcement of the U.S. Department of

Transportation's Hazards Materials Transportation Regulations in the motor carrier mode in Iowa.

AGREEMENT

It is hereby agreed that each of the affected agencies will conduct the following functions:

Iowa State Department of Health

1. License, inspect and otherwise regulate radioactive material in accordance with Chapter 136C, The Code, as implemented by radiation emitting equipment rules [470-Title IV (136C) IAC].
2. Obtain correction of violations of Chapter 136C, The Code.
3. Keep the Iowa Department of Transportation apprised of all observed violations of applicable U.S. Department of Transportation regulations.
4. When requested by the Iowa Department of Transportation, evaluate radioactive material hazards to any individual and evaluate radiation levels of radioactive materials in highway transport.

Iowa Department of Transportation

1. Review results of Iowa State Department of Health inspections involving motor carrier violations and advise the Iowa State Department of Health of additional actions which are necessary under the Iowa Department of Transportation authority.
2. Request the Iowa State Department of Health to evaluate radioactive material hazards to any individual and to provide assistance by specific request to evaluate radiation levels of radioactive materials in highway transport.

3. Notify the Iowa State Department of Health through the Department of Water, Air and Waste Management 24 hour spill reporting system of incidents involving radioactive material which have been observed by or reported to the Iowa Department of Transportation.

Funding

No exchange of funds or payments for services is included in this agreement. No property will be jointly acquired, held or disposed of under the terms of this agreement.

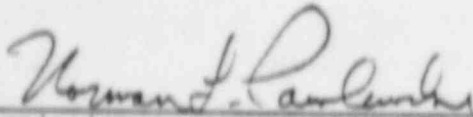
Liaison Designations

John A. Eure, Iowa State Department of Health.

Gerald D. Allen, Iowa Department of Transportation.

Modification, Termination or Extension

The agreement will be reviewed annually and may be revised by mutual agreement when necessary. This agreement expires on December 31, 1985 and may otherwise be terminated with sixty (60) days written notice by either party. The agreement may be extended for additional twelve (12) month periods by annual endorsement of both parties.



Commissioner
Iowa State Department of Health



Director
Iowa Department of Transportation

Date

1-31-85

Date

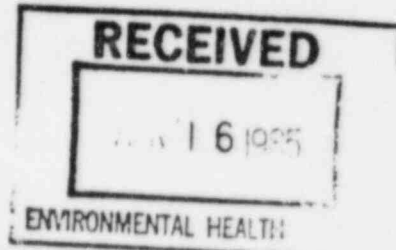
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DEPARTMENT OF
WATER, AIR AND WASTE
MANAGEMENT

INTERAGENCY AGREEMENT
BETWEEN
IOWA STATE DEPARTMENT OF HEALTH
AND
IOWA DEPARTMENT OF WATER, AIR AND WASTE MANAGEMENT

APPENDIX I B.3



The Iowa State Department of Health and the Iowa Department of Water, Air and Waste Management enter into this interagency agreement pursuant to the authority of Sections 28E.4 and 136C.2, The Code.

The purpose of this agreement is to avoid duplication and promote coordination of radiation protection activities; assure the uniform regulation of the use, manufacture, production, distribution, sale, transport, transfer, installation, repair, receipt, acquisition, ownership or possession of radioactive materials from a radiological health and safety standpoint relating to the exposure of individuals; and to assure timely investigations of all potentially hazardous situations resulting from radioactive material.

Delineation of Agency Responsibilities

This document applies to all areas of regulation of radioactive material in which the Iowa State Department of Health and the Iowa Department of Water, Air and Waste Management have mutual responsibilities.

Prior to a Federal/State agreement under provisions of Section 274b of the Atomic Energy Act of 1954 as amended, the State of Iowa does not have the authority to regulate byproduct, source or special nuclear material with respect to their radiological properties which is under the jurisdiction of the U.S. Nuclear Regulatory Commission (NRC). Hereafter these materials are referred to as "agreement materials." Following consumation of such a Section 274b Agreement between the NRC and the State of Iowa it is understood that all regulation of "agreement materials" subject to the 274b Agreement will be carried out by the Iowa State Department of Health.

The Iowa State Department of Health is responsible under Chapter 136C, The Code, for licensing, inspecting and setting standards for radioactive material. In implementing this act, the Iowa State Department of Health has established rules [470 Title IV (136C) IAC] relating to the prescribing of radiation safety criteria for facilities and radioactive material. These rules are enforced through a program of licensing radioactive material and inspecting facilities to assure adherence to the safety standards and the collection of fees. Under this law a license from the Iowa State Department of Health is required for the use, manufacture, production, distribution, sale, transport, transfer, installation, repair, receipt, acquisition, ownership or possession of any radioactive material except as exempted under 470 Title IV (136C) IAC.

The Iowa Department of Water, Air and Waste Management, in addition to other duties and authorities, is responsible for the enforcement of Sections 455B.331 through 455B.340 entitled Part 2, "Radioactive Waste."

AGREEMENT

It is hereby agreed that each of the affected agencies will conduct the following functions:

Iowa State Department of Health

1. License, inspect and otherwise regulate radioactive material in accordance with Chapter 136C, The Code, as implemented by radiation emitting equipment rules [470-Title IV (136C) IAC].
2. Keep the Iowa Department of Water, Air and Waste Management apprised of all apparent violations of Sections 455B.331 through 455B.340 in addition to obtaining correction under Chapter 136C, The Code.
3. When requested by the Iowa Department of Water, Air and Waste Management, evaluate radioactive material hazards to any individual.
4. Provide the Department of Water, Air and Waste Management with information relating to the generation and management of low-level radioactive waste at facilities licensed by the Iowa State Department of Health.

Iowa Department of Water, Air and Waste Management

1. For all radioactive material except "agreement material":
 - a. Review the results of Iowa State Department of Health inspections involving violations of Sections 455B.331 through 455B.340, The Code,
 - b. Advise the Iowa State Department of Health of additional actions which are necessary under the Iowa Department of Water, Air and Waste Management authority, and
 - c. Proceed with such actions in coordination with the Iowa State Department of Health.
2. Request the Iowa State Department of Health to evaluate radioactive material hazards to any individual.
3. Notify Iowa State Department of Health of incidents involving radioactive material which have been reported to the Department of Water, Air and Waste Management.

Reporting

The Iowa State Department of Health, Environmental Health Section, Radiological Health Program, will provide the Iowa Department of Water, Air and Waste Management with field inspection reports of all radiation facilities where violations of Sections 455B.331 through 455B.340 have not been corrected in accordance with Chapter 136C, The Code.

Evaluation of Agreement

The agreement will be reviewed annually and plans developed for revisions as necessary.

Funding

No exchange of funds or payments for services is included in this agreement. No property will be jointly acquired, held or disposed under the terms of this agreement.

Liaison Designations

John A. Eure, Iowa State Department of Health.

Ronald L. Kolpa, Iowa Department of Water, Air and Waste Management.

This agreement is subject to annual review and may be terminated within sixty (60) days by written notice by either party.

Norman J. Carolowski
Commissioner
Iowa State Department of Health

Stephen W. Bullen
Executive Director
Iowa Department of Water, Air
and Waste Management

4-9-85
Date

4/15/85
Date

~~provision. A corporate officer who signs a written rejection with the industrial commissioner may terminate the rejection by signing a written notice of termination which is witnessed by two disinterested individuals, who are not formally or informally connected with the corporation and which is filed by the corporation with the industrial commissioner.~~

~~83 Acts, ch 1051, §§ 7, 8
Repealed by 82 Acts, ch 1161, § 28~~

~~87.23 Repealed by 70 Acts, ch 1051, § 26.~~

~~87.24 Repealed by 82 Acts, ch 1161, § 28; see §87.21.~~

~~87.25 to 87.27 Repealed by 82 Acts, ch 1161, § 28.~~

CHAPTER 88

OCCUPATIONAL SAFETY AND HEALTH

Referred to in §88B.4, 104.2, 104.10, 147.152, 331.324, 455B.135, 455B.390, 455D.8

- 88.1 Public policy.
- 88.2 General.
- 88.3 Definitions.
- 88.4 Duties.
- 88.5 Occupational safety and health standards.
- 88.6 Inspections, investigations, and record keeping.
- 88.7 Citations.
- 88.8 Procedure for enforcement.
- 88.9 Judicial review.
- 88.10 Occupational safety and health review commission.

- 88.11 Procedures to counteract imminent dangers.
- 88.12 Confidentiality of trade secrets.
- 88.13 Variations, tolerances and exemptions.
- 88.14 Penalties.
- 88.15 Appeal procedures for employees.
- 88.16 Training and employee and employer education.
- 88.17 Representation in civil litigation.
- 88.18 Statistics.
- 88.19 Annual report.
- 88.20 Effect of chapter.
- 88.21 Conflicts resolved.

88.1 Public policy.

It is the policy of this state to assure so far as possible every working person in the state safe and healthful working conditions and to preserve human resources by:

1. Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and perfect existing programs for providing safe and healthful working conditions.
2. Providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions.
3. Authorizing the labor commissioner to set mandatory occupational safety and health standards applicable to businesses, and by creating an occupational safety and health review commission for carrying out adjudicatory functions under the chapter.
4. Building upon advances already made through employer and employee initiative for providing safe and healthful working conditions.
5. Providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

6. Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety.

7. Providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity or life expectancy as a result of the employee's work experience.

8. Providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health.

9. Providing for the development and promulgation of occupational safety and health standards.

10. Providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for an individual violating this prohibition.

11. Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem.

12. Encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

13. Devoting adequate funds to the administration and enforcement of occupational safety and health standards and rules promulgated by the labor commissioner.

[C66, 71, §88A.1; C73, 75, 77, 79, 81, §88.1]

88.2 General.

1. The bureau of labor, established in chapter 91, is designated to administer this chapter.

2. The necessary legal authority and qualified personnel shall be provided for the administration and enforcement of this chapter and such standards adopted pursuant to this chapter.

3. Personnel administering the chapter shall be employed pursuant to chapter 19A.

4. In carrying out responsibilities of the commissioner under this chapter, the commissioner is authorized to enter into contracts with any state agency, with or without reimbursement, for the purpose of obtaining the services, facilities, and personnel of such agency and with the consent of any state agency or any political subdivision of the state, accept and use the services, facilities, and personnel of any agency of the state or political subdivision, and employ experts and consultants or organizations, in order to expeditiously, efficiently and economically effectuate the purposes of this chapter. The provisions of this subsection are subject to approval of the executive council where required by law.

5. The commissioner, the governor, and the state comptroller are hereby authorized to obtain and accept federal grants to the state to be used in connection with the funds appropriated for the administration of this chapter and federal funds in addition thereto.

[SS15, §4999-a5; C24, 27, 31, 35, 39, §1482; C46, 50, 54, 58, 62, 66, 71, §88.1; C73, 75, 77, 79, 81, §88.2]

88.3 Definitions.

Wherever used in this chapter, unless the context clearly requires a different meaning:

1. "Commissioner" means the labor commissioner of the state of Iowa.

2. "Commission" means the occupational safety and health review commission established under this chapter.

3. "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

4. "Employer" means a person engaged in a business who has one or more employees and also includes the state of Iowa, its various departments and agencies, and any political subdivision of the state.

5. "Employee" means an employee of an employer who is employed in a business of the employer. "Employee" also means an inmate as defined in section 85.59, when the inmate works in connection with the maintenance of the institution, in an industry maintained in the institution, or while otherwise on detail to perform services for pay.

6. "Emergency temporary standards" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be deter-

mined by the commissioner that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, and was formulated in a manner which afforded an opportunity for diverse views to be considered or is an emergency temporary standard provided by the secretary pursuant to and in conformance with the provisions of the federal law.

7. "Occupational safety and health standard" means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safety or healthful employment and places of employment.

8. "Imminent danger" means a condition or practice in any place of employment which is such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures of this chapter, exclusive of the procedures set forth in section 88.11.

9. "Secretary" means the secretary of labor of the United States.

10. "Federal law" means the Act of Congress approved December 29, 1970, 84 Stat. 1590, officially cited as the "Occupational Safety and Health Act of 1970 (29 USC 651-678)."

[C66, 71, §88A.2; C73, 75, 77, 79, 81, §88.3]

88.4 Duties.

Each employer shall furnish to each of the employer's employees employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employer's employees and comply with occupational safety and health standards promulgated under this chapter.

Each employee shall comply with occupational safety and health standards and all rules and orders issued pursuant to this chapter which are applicable to the employee's own actions and conduct.

[C66, 71, §88A.1; C73, 75, 77, 79, 81, §88.4]

Referred to in §88.7, 88.14

88.5 Occupational safety and health standards.

1. Promulgation of rules.

a. As soon as practicable following July 1, 1972, the commissioner shall by rule, adopt and promulgate those occupational safety and health standards, which would result in improved safety or health for employees; provided, that the commissioner shall adopt no such standard unless the same has been adopted and promulgated as a permanent standard by the secretary in accordance with the procedures set forth in the federal law. In the event that any such federal standard is subsequently amended, modified, repealed, or substituted by a new standard, the commissioner shall, within ninety days, review such amendment, modification, repeal or substitution, and take such action with respect to the state standards, including the repeal or substitution of the same, as will conform the state standards to those federal standards then in effect.

b. Before promulgating, modifying, or revoking any standard pursuant to this section, the commissioner shall hold a public hearing on the subject mat-

ter of the proposed promulgation, modification, or revocation. Any interested person may appear and be heard at such hearing, in person or by agent or counsel. The commissioner shall maintain a mailing list for hearings, and at least thirty days before the hearing the commissioner shall mail a notice of the hearing by ordinary mail to each person on the mailing list. Such notice shall include a copy of the proposed promulgation, modification, or revocation. When the commissioner receives a written request from any person to be placed on the mailing list for hearings, the commissioner shall add such person to the mailing list. At the end of each calendar year, the commissioner may remove any person from the mailing list if the commissioner has not received from such person during the last three months of such calendar year a written request to be placed on the mailing list for the following year. The commissioner shall cause to be published a notice of each hearing in one or more newspapers in the state having a statewide circulation. The provisions of this section are in addition to the requirements of chapter 17A.

c. Notwithstanding other provisions of this section, upon or following July 1, 1972, the commissioner may adopt as interim standards those standards adopted by the secretary in conformance with section 6(a) of the federal law, provided that any such standard so adopted shall cease to be effective on April 28, 1973, unless the commissioner shall have initiated the procedures for adopting a permanent standard in conformance with and following the procedures set forth in this section, in which case the interim standard shall remain in effect pending the adoption of the permanent standard. In the event that any such federal interim standard is subsequently amended, modified, repealed, or substituted by a new interim standard, the commissioner shall, within thirty days, review such amendment, modification, repeal or substitution, and take such action with respect to the state interim standards, including the repeal or substitution of the same, as will conform the state interim standards to those federal interim standards then in effect.

2. *Toxic materials and other harmful physical agents.* The commissioner, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of the employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate, but in any event shall conform with the provisions of subsection 1 of this section. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, a standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

3. *Temporary variances.*

a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph "b" of this subsection and establishes that the employer is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or operation of the facilities cannot be completed by the effective date, that the employer is taking all available steps to safeguard the employer's employees against the hazards that are covered by the standard, and that the employer has an effective program for coming into compliance with this standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter except that such an order may be renewed not more than twice so long as the requirements of this paragraph are met and an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred and eighty days.

b. An application for a temporary order under this subsection shall contain:

(1) A specification of the standard or portion thereof from which the employer seeks a variance.

(2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the fact represented, that the employer is unable to comply with the standard or portion thereof and a detailed statement of those reasons therefor.

(3) A statement of the steps the employer has taken and will take (with specific dates) to protect employees against the hazard covered by the standard.

(4) A statement of when the employer expects to be able to comply with the standard and what steps the employer has taken and what steps the employer will take (with dates specified) to come into compliance with the standard.

(5) A certification that the employer has informed the employer's employees of any application by giving a copy thereof to their authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other reasonably appropriate means as may be directed by the commissioner.

(6) A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing.

4. *Labels, warnings, protective equipment.* Any standard promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at the employer's cost, to employees exposed to such hazard in order to most effectively determine whether the health of such employee is adversely affected by such exposure. The results of such examinations or tests shall be furnished to the commissioner, and if released by the employee, shall be furnished to the employee's physician and the employer's physician.

5. *Emergency temporary standards.* The commissioner shall provide for an emergency temporary standard to take immediate effect if the commissioner determines that employees are exposed to grave danger from exposure from substances or agents determined to be toxic or physically harmful or from new hazards and if such emergency temporary standard is necessary to protect the employees from such danger. Such emergency standard shall cease to be effective and shall no longer be applicable after the lapse of six months following the effective date thereof unless the commissioner has initiated the procedures provided for under this chapter, for the purpose of promulgating a permanent standard as provided in subsection 1 of this section in which case the emergency temporary standard will remain in effect until the permanent standard is adopted and becomes effective. Abandonment of the procedure for such promulgation by the commissioner shall terminate the effectiveness and applicability of the emergency temporary standard.

6. *Permanent variance.* Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if the commissioner determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to the employer's employees which are as safe and healthful as those which would prevail if the employer complied with the standard. The rule or order so issued shall prescribe the condi-

tions the employer must maintain, and the practices, means, methods, operations, and processes which the employer must adopt and utilize to the extent that they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the commissioner on the commissioner's own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

7. *Special variance.* Where there are conflicts with standards, rules or regulations promulgated by any federal agency other than the United States department of labor, special variances from standards, rules or regulations promulgated under this chapter may be granted to avoid such regulatory conflicts. Such variances shall take into consideration the safety of the employees involved. Notwithstanding any other provision of this chapter, and with respect to this paragraph, any employer seeking relief under this provision must file an application therefor with the commissioner and the commissioner shall forthwith hold a hearing at which employees or other interested persons, including representatives of the federal regulatory agencies involved, may appear and upon the showing that such a conflict indeed exists the commissioner may issue a special variance until the conflict is resolved.

8. *Priority for setting standards.* In determining the priorities for establishing standards under this section, the commissioner shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

9. *Product safety.* Standards promulgated under this chapter shall not be different from federal standards applying to products distributed or used in interstate commerce unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision does not apply to customized products or parts not normally available on the open market, or to optional parts or additions to products which are ordinarily available with such optional parts or additions.

10. *Judicial review before enforcement.* The provisions of the Iowa administrative procedure Act shall apply to judicial review of standards issued under this section. Notwithstanding any provision of the Iowa administrative procedure Act to the contrary, a person who is aggrieved or adversely affected by a standard issued under this section must seek judicial review of such standard prior to the sixtieth day after such standard becomes effective. All determinations of the commissioner shall be conclusive if supported by substantial evidence in the record as a whole.

11. *Fire fighters clothing and equipment.* The commissioner shall establish standards and promulgate rules for protective helmets, boots, fire coats, trousers, gloves, work uniforms and may set standards for any other protective clothing or equipment which shall be worn or used by fire fighters within the state. In establishing these standards, the commissioner shall consider the standards of or proposed by the national fire protection association, the international association of fire fighters and any federal agency which may have such standards. The commissioner

shall provide a copy of the standards, rules and any changes thereto to each fire department operating in this state. The standards established and the rules promulgated hereunder shall apply to protective clothing and equipment worn or used by every fire fighter in the state, provided that the standards and rules shall be advisory rather than mandatory for volunteer fire departments.

The standards promulgated by the commissioner under the provisions of this subsection shall be effective for all equipment purchased after January 1, 1979. All equipment for which standards are established under the provisions of this subsection shall meet the standards promulgated under the provisions of this subsection prior to January 1, 1981.

[C66, 71, §88A.11-88A.13; C73, 75, 77, 79, 81, §88.5]
Referred to in §88.6, 88.7, 88.14

88.6 Inspections, investigations, and record keeping.

1. *Entrance and inspections.* In order to carry out the purposes of this chapter, the commissioner or the commissioner's representative, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized:

a. To enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer.

b. To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and within a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

2. *Subpoena of witness and evidence.* In making inspections and investigations under this chapter, the commissioner may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the district courts of this state. In case of contumacy, failure, or refusal of any person to obey such an order, any appropriate district court within the jurisdiction of which such person is found, or resides, or transacts business, upon the application by the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear, to produce evidence, if, as, and when so ordered and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

3. *Accident and illness records.*

a. Each employer shall make, keep and preserve, and make available to the commissioner such records regarding the employer's activities relating to this chapter as the commissioner may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The commissioner shall also issue regulations requiring that employers, through posting

of notices or other appropriate means, keep their employees informed of their protection and obligations under this chapter, including the provisions of applicable standards.

b. The commissioner shall prescribe regulations requiring an employer to maintain accurate records of, and to make periodic reports on, work related deaths, injuries, and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

c. The commissioner shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 88.5, subsection 2. Such regulations shall provide employees or their authorized employee representative with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records that will indicate the employee's own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 88.5, subsection 2, and shall inform any employee who is being thus exposed of the corrective action being taken.

d. All employers in the state of Iowa are required to make all reports to the secretary required by federal law as if this chapter were not in effect.

e. The commissioner will make such reports to the secretary in such form and containing such information, as the secretary shall from time to time require pursuant to federal law.

f. The regulations referred to in this subsection shall not prescribe requirements different from those provided by the federal law and regulations.

4. *Representatives of employers and employees.* Subject to regulations issued by the commissioner, a representative of the employer and an authorized employee representative shall be given an opportunity to accompany the commissioner or the commissioner's authorized representative during the physical inspection of any workplace under subsection 1 of this section, for the purpose of aiding such inspection. Where there is no authorized employee representative, the commissioner or the commissioner's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

5. *Special inspections.* Any employees or authorized employee representative who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the commissioner or the commissioner's authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or authorized

employee representative, and a copy shall be provided the employer or the employer's agent no later than at the time of inspection, except that upon the request of the person giving such notice the person's name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to this section. If, upon receipt of such notification, the commissioner determines that there are reasonable grounds to believe that such violation or danger exists, the commissioner shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the commissioner determines that there is no reasonable grounds to believe that a violation or danger exists, the commissioner shall notify the employees or authorized employee representative in writing of such determination.

6. *Notice of violations.* During any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the commissioner or any representative of the commissioner responsible for conducting the inspection, in writing, of any violation of this chapter which they have reason to believe exists in such workplace. The commissioner shall, by regulation, establish procedures for an informal review of any refusal by a representative of the commissioner to issue a citation with respect to any such alleged violation and shall furnish the employees or authorized employee representative requesting such review a written statement of the reason for the commissioner's final disposition of the case.

7. *General.* Any information obtained by the commissioner under this chapter shall be obtained with a minimum burden upon employers. Except for the purpose of administration of this chapter, no information received by the commissioner or the commissioner's representative from an employer, in compliance with and pursuant to this chapter, shall be admissible in any action brought by or for the benefit of any person. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

[C66, 71, §88.11, 88.12, 88A.10, 88A.14; C73, 75, 77, 79, 81, §88.6]

88.7 Citations.

1. *Issuance by commissioner.*

a. If, upon inspection or investigation, the commissioner or the commissioner's authorized representative believes that an employer has violated the requirements of section 88.4, of any standard, rule or rules promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, the commissioner shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rules or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The commissioner shall prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety and health.

b. If, upon inspection or investigation, the commissioner or the commissioner's authorized representative believes that an employee, under the employee's own volition, has violated the requirements of section 88.4 of any standard, rule or rules promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, the commissioner shall with reasonable promptness issue a citation to the employee. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rules, regulations or order alleged to have been violated. The commissioner shall prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety and health.

2. *Posting of citation.* Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the commissioner, at or near each place a violation referred to in the citation occurred.

3. *Statute of limitations.* No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

[C66, 71, §88A.15; C73, 75, 77, 79, 81, §88.7]

Referred to in §88.8, 88.14, 88.15

88.8 Procedure for enforcement.

1. *Postinspection penalty notice.* If, after an inspection or an investigation, the commissioner issues a citation under section 88.7, the commissioner shall within a reasonable time after the termination of such inspection or investigation notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 88.14 and that the employer has fifteen working days within which to notify the commissioner that the employer wishes to contest the citation or proposed assessment of penalties. If, within fifteen working days from the receipt of the notice issued by the commissioner, the employer fails to notify the commissioner that the employer intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employees or authorized employee representative under subsection 3 of this section within such time, the citation and the assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

2. *Noncompliance notice.* If the commissioner has reason to believe that an employer has failed to correct the violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the commissioner shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 88.14 by reason of such failure, and that the employer has fifteen working days within which to notify the commissioner that the employer wishes to contest the commissioner's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the commissioner, the employer fails to notify the commissioner that the employer intends to contest the notification or pro-

posed assessment of penalty, the notification and assessment, as proposed, shall be deemed the final order of the commission and not subject to review by any court or agency.

3. *Contested notice.* If an employer notifies the commissioner that the employer intends to contest a citation issued under section 88.7 or notification issued under subsection 1 or 2 of this section or if, within fifteen working days of the issuance of a citation under section 88.7, any employee or authorized employee representative files a notice with the commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the commissioner shall immediately advise the commission of such notification, and the commission shall afford an opportunity for a hearing. The commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the commissioner's citation or proposed penalty or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the commissioner, after an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection, and shall conform to rules of procedure promulgated and adopted under the federal law by federal authorities insofar as the same do not conflict with state law.

[C66, 71, §88A.15, 88A.16; C73, 75, 77, 79, 81, §88.8]
Referred to in §88.9

88.9 Judicial review.

1. *Aggrieved persons.* Judicial review of any order of the commission issued under section 88.8, subsection 3, may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the violation is alleged to have occurred or where the employer has its principal office and may be filed within sixty days following the issuance of such order. The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.

2. *Uncontested commission orders.* The commissioner may also obtain review or enforcement of any final order of the commission by filing a petition for such relief in the district court of the county in which the alleged violation occurred or in which the employer has its principal office and the judicial review provisions of the Iowa administrative procedure Act shall govern such proceedings to the extent applicable. If no petition for judicial review is filed within sixty days after service of the commission's order, the commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of such sixty-day period. In any such case, as well as in the

case of a noncontested citation or notification by the commissioner which has become a final order of the commission under section 88.8, subsection 1 or 2, the clerk of court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the commission and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a district court entered pursuant to this subsection or subsection 1 of this section, the district court may assess the penalties provided in section 88.14 in addition to invoking any other available remedies.

3. *Discrimination and discharge.* No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of the employee or others of any right afforded by this chapter. Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the commissioner alleging such discrimination. Upon receipt of such complaint, the commissioner shall cause such investigation to be made as the commissioner deems appropriate. If upon such investigation, the commissioner determines that the provisions of this subsection have been violated, the commissioner shall bring an action in the appropriate district court against such person. In any such action, that district court shall have jurisdiction, for cause shown to restrain violations of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to the employee's former position with back pay. Within ninety days of the receipt of a complaint filed under this subsection the commissioner shall notify the complainant of the commissioner's determination under this subsection.

[C66, 71, §88A.16; C73, 75, 77, 79, 81, §88.9]
Referred to in §602.810(23)

88.10 Occupational safety and health review commission.

1. *The occupational safety and health review commission is hereby established.* The commission shall be composed of three members who shall be appointed by the governor subject to confirmation by the senate, which shall include among its members one member qualified by experience and affiliation to represent the employers, one member similarly qualified to represent labor, and one representative who shall be impartial and represent the public. The governor shall designate one of the members of the commission to serve as chairperson.

2. *Terms of office.* The terms of members of the commission shall be six-year staggered terms beginning and ending as provided in section 69.19. A vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which the member was appointed shall be filled only for the remainder of the unexpired term. A member of the commission may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office.

3. *Principal office.* The commission shall have an office at the seat of government. The executive council

shall provide suitable office space, necessary furniture, equipment, and supplies. The commission is authorized to employ necessary personnel for the carrying out of its functions and duties as provided under this chapter. The commission may hold meetings and hearings anywhere in the state.

4. *Compensation.* Members of the commission shall be compensated at the rate of forty dollars per diem and shall be paid their actual and necessary expenses.

5. *Quorum requirements.* For the purpose of carrying out its functions under this chapter, two members of the commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

6. *Public hearings.* Every official act of the commission shall be entered of record, and its hearings and records shall be open to the public. The commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the commission has adopted a different rule, its proceedings shall be in accordance with the Iowa rules of civil procedure.

7. *Depositions and testimony.* The commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose and to produce books, papers or documents in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before district courts of any county. Witnesses whose depositions are taken under this subsection, the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the district courts of any county.

8. *Appeals heard expeditiously.* Appeals to the commission shall be heard expeditiously.

[C66, 71, §88A.3-88A.9; C73, 75, 77, 79, 81, §88.10]
Confirmation, §2.32

88.11 Procedures to counteract imminent dangers.

1. *Imminent danger orders.* The district court of the county in which the imminent danger is alleged to exist shall have jurisdiction, upon petition of the commissioner, to restrain any conditions or practices in any place of employment which are such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. In the event the appropriate trial judge is not available, any judge of the judicial district in which such county is located shall have authority to issue orders under this section. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

2. *Imminent danger proceedings.* Upon the filing of any such petition the said district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceedings shall be as provided by the Iowa rules of civil procedure. No temporary restraining order issued without notice shall be effective for a period longer than five days.

3. *Notification.* Whenever and as soon as an inspector concludes that the conditions or practices described in subsection 1 of this section exist in any place of employment, the inspector shall inform the affected employees and employers of the danger and that the inspector is recommending to the commissioner that relief be sought. The commissioner shall adopt rules prescribing the procedures in enforcing imminent danger orders which procedures shall reasonably conform to those promulgated under the federal law insofar as the same do not conflict with state law.

4. *Employee's rights.* If the commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the authorized employee representative, may bring an action against the said commissioner in the district court of the county in which the imminent danger is alleged to exist or in which the employer's principal office is located, for a writ of mandamus to compel the commissioner to seek such an order and for such further relief as may be appropriate.

[C66, 71, §88A.17; C73, 75, 77, 79, 81, §88.11]
Referred to in §88.3

88.12 Confidentiality of trade secrets.

Notwithstanding any provisions of this chapter, all information reported to or otherwise obtained by the commissioner or the commissioner's representative in connection with any inspection or proceeding under this chapter which contains or might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant to any proceeding under this chapter. In any such proceeding the commissioner, the commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

[C73, 75, 77, 79, 81, §88.12]
Referred to in §88.14

88.13 Variations, tolerances and exemptions.

When the secretary grants variations, tolerances, and exemptions to avoid serious impairment of the national defense as provided under authority of section 16 of the federal law, the commissioner shall grant the same variations, tolerances, and exemptions in the Iowa law, rules and standards to be effective immediately.

[C73, 75, 77, 79, 81, §88.13]

88.14 Penalties.

1. *Willful violations.* Any employer who willfully or repeatedly violates the requirements of section 88.4, any standard, rule, or order promulgated pursuant to section 88.5, or regulations prescribed pursuant

to this chapter, may be assessed a civil penalty of not more than ten thousand dollars for each violation.

2. *Serious violations.* Any employer who has received a citation for a serious violation of the requirements of section 88.4, of any standard, rule, or order promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, shall be assessed a civil penalty of up to one thousand dollars for each such violation.

3. *Nonserious violations.* Any employer who has received a citation for a violation of the requirements of section 88.4, of any standard, rule or order promulgated pursuant to section 88.5 or of rules prescribed pursuant to this chapter and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to one thousand dollars for each such violation.

4. *Failure to correct.* Any employer who fails to correct a violation for which a citation has been issued under section 88.7, subsection 1, within the period permitted for its correction (which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding under section 88.8 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than one thousand dollars for each day during which such failure or violation continues.

5. *Willful violations causing death.* Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be guilty of a serious misdemeanor; except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of an aggravated misdemeanor.

6. *Advance notice of inspections.* Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the commissioner or the commissioner's designees, shall, upon conviction, be guilty of a serious misdemeanor.

7. *Filing false documents.* Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be guilty of a serious misdemeanor.

8. *Disclosure of confidential information.* Whoever violates the provisions of section 88.12 shall be guilty of a serious misdemeanor; and shall be removed from office or employment.

9. *Violation of posting requirements.* Any employer who violates any of the posting, reporting or record-keeping requirements as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to one thousand dollars for each violation.

10. *Assessment of penalties.* The commission shall have the authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

11. *Definition of serious violation.* For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

12. *Collection of penalties.* Civil penalties owed under this chapter shall be paid to the commissioner for deposit with the treasurer of state and shall accrue to the state and may be recovered in a civil action in the name of the state brought in the district court of the county where the violation is alleged to have occurred or where the employer has its principal office.

[C73, §4064; C97, §4999, 5025, 5026; S13, §2477-1a, 4999-a1, -a2; SS15, §4999-a5; C24, 27, 31, 35, 39, §1494; C46, 50, 54, 58, 62, §88.13; C66, 71, §88.13, 88A.15, 88A.17; C73, 75, 77, 79, 81, §88.14]

Referred to in §88.8, 88.9

88.15 Appeal procedures for employees.

In the event an employee is issued a citation as provided in section 88.7, the procedures for appeal as provided for employers in this chapter shall apply.

[C73, 75, 77, 79, 81, §88.15]

88.16 Training and employee and employer education.

1. The commissioner shall conduct directly or by contract, educational programs to provide an adequate supply of qualified personnel to administer this chapter and informational programs on the importance of and proper use of adequate safety and health equipment.

2. The commissioner is authorized to conduct directly or by grants or contracts, short term training of personnel engaged in work related to the commissioner's responsibilities under this chapter.

3. The commissioner shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this chapter, and consult with and advise employers, employees, and organizations representing employers and employees, as to effective means of preventing occupational injuries and illnesses.

[C73, 75, 77, 79, 81, §88.16]

88.17 Representation in civil litigation.

The attorney general of the state shall upon request by the commissioner represent the commissioner in any civil litigation brought under this chapter.

[C73, 75, 77, 79, 81, §88.17]

88.18 Statistics.

In order to further the purposes of this chapter, the commissioner shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this chapter. The commissioner shall compile accurate statistics on work injuries and illnesses which shall include all dis-

abling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

[C73, 75, 77, 79, 81, §88.18]

88.19 Annual report.

Within one hundred twenty days following the convening of each session of each general assembly, the commissioner shall prepare and submit to the governor for transmittal to the general assembly a report upon the subject matter of this chapter, the progress toward achievement of the purpose of this chapter, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports may include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this chapter, defining areas of emphasis for new criteria and standards; and evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which

standards or criteria have been developed during the preceding year; description of co-operative efforts undertaken between government agencies and other interested parties in the implementation of this chapter during the preceding year; a progress report on the development of an adequate supply of trained personnel in the field of occupational safety and health, including estimates of future needs and the efforts being made by government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this chapter.

[C73, 75, 77, 79, 81, §88.19]

88.20 Effect of chapter.

Nothing in this chapter shall be construed to supersede or in any manner affect any workers' compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

[C73, 75, 77, 79, 81, §88.20]

88.21 Conflicts resolved.

The provisions of this chapter will prevail wherever the same conflicts with any other chapter of the Code.

[C73, 75, 77, 79, 81, §88.21]

CHAPTER 88A

SAFETY INSPECTION OF AMUSEMENT RIDES

- 88A.1 Definitions.
- 88A.2 Permit required.
- 88A.3 Rules adopted.
- 88A.4 Permit and inspection fees.
- 88A.5 Fees to general fund.
- 88A.6 Personnel.
- 88A.7 Cessation order.

- 88A.8 Judicial review.
- 88A.9 Insurance.
- 88A.10 Penalties.
- 88A.11 Exemptions.
- 88A.12 Local regulation.
- 88A.13 Waiver of inspection.

88A.1 Definitions.

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

1. "Commissioner" means the labor commissioner or the labor commissioner's designee.
2. "Bureau" means bureau of labor.
3. "Amusement device" means any equipment or piece of equipment, appliance or combination thereof designed or intended to entertain or amuse a person.
4. "Amusement ride" means any mechanized device or combination of devices which carries passengers along, around, or over a fixed or restricted course

for the purpose of giving its passengers amusement, pleasure, thrills, or excitement.

5. "Carnival" means an enterprise offering amusement or entertainment to the public in, upon, or by means of amusement devices or rides or concession booths.

6. "Fair" means an enterprise principally devoted to the exhibition of products of agriculture or industry in connection with the operation of amusement rides or devices or concession booths.

7. "Concession booth" means a structure, or enclosure, used at more than one fair or carnival from which amusements are offered to the public.

CHAPTER 136C

RADIATION MACHINES AND RADIOACTIVE MATERIALS

136C.1	Definitions.	136C.8	Inspections.
136C.2	Applicability.	136C.9	Registration and license requirements.
136C.3	Duties of department.	136C.10	Fees.
136C.4	Penalties.	136C.11	Federal-state agreements.
136C.5	Enforcement.	136C.12	Conflicting laws.
136C.6	Reserved.	136C.13	Emergencies.
136C.7	Acceptance of funds.	136C.14	Qualified operators — display of credentials.

136C.1 Definitions.

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

1. "Commissioner" means the commissioner of public health or the commissioner's designee.
2. "Department" means the state department of health.
3. "Decommissioning" means final operational activities at a site to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care.
4. "Radiation" means energy forms capable of causing ionization including alpha particles, beta particles, gamma rays, X rays, neutrons, high-speed protons, and other atomic particles, but does not include sound or radio waves, or visible light, or infrared or ultraviolet light.
5. "Radiation machine" means a device capable of producing radiation except those that produce radiation solely from radioactive material.
6. "Radioactive material" means a solid, liquid, or gaseous material that emits radiation spontaneously including accelerator-produced and naturally occurring material, and byproduct, source, and special nuclear material as defined in the Atomic Energy Act of 1954 as amended to July 1, 1984.
7. "Licensed professional" means a person licensed or otherwise authorized by law to practice medicine, osteopathy, podiatry, chiropractic, dentistry, dental hygiene, or veterinary medicine.

[C79, 81, §136C.1]

84 Acts, ch 1286, §10

136C.2 Applicability.

This chapter applies to radiation machines and radioactive material located in this state. The provisions of this chapter do not supersede or duplicate the authority and programs of any other agency of the state or the United States government. To avoid duplication and promote co-ordination of radiation protection activities, the department may enter into agreements pursuant to chapter 28E with other state and federal agencies, or with private organizations or individuals, to administer this chapter.

[C79, 81, §136C.2]

84 Acts, ch 1286, §11

136C.3 Duties of department.

The department is designated the state radiation control agency and is responsible for regulating the installation and use of radiation machines and the use of radioactive materials in this state as provided in this chapter. The department shall:

1. Establish minimum criteria and safety standards for the installation, operation, and use of radiation machines and radioactive materials.
2. Establish minimum training standards for operators of radiation machines and users of radioactive materials. A state of Iowa license to practice medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene, or veterinary medicine satisfies the minimum training standards for operation of radiation machines only.
3. Develop programs for evaluation and control of hazards associated with the use of sources of radiation with due regard for compatibility of a proposed program with federal programs regulating byproduct, source, and special nuclear materials and considering consistency of a proposed program with federal programs for regulation of radiation machines.
4. Adopt, publish, and amend rules in accordance with chapter 17A as necessary for the implementation and enforcement of this chapter. The rules may provide for the licensing and control of radioactive materials with due regard for compatibility with federal regulatory programs.
5. Issue orders as necessary in connection with licensing and registration of radiation machines and radioactive materials.
6. Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation.
7. Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation.
8. Collect and disseminate information relating to control of sources of radiation. The department shall maintain the following information on file:
 - a. License applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations.

b. A list of persons possessing sources of radiation requiring registration under this chapter and any administrative or judicial action involving each person.

c. Departmental rules relating to regulation of sources of radiation, existing or pending, and related actions.

9. Adopt rules requiring the keeping of such records with respect to activities under licenses and registration certificates issued pursuant to this chapter as the department determines necessary to effect the purposes of this chapter.

[C79, 81, §136C.3]

84 Acts, ch 1286, §1

Referred to in §136C.5

§136C.3, Code 1983, repealed by 84 Acts, ch 1286, §14

136C.4 Penalties.

1. It is unlawful to operate or use radiation machines or radioactive material in violation of this chapter or of any rule adopted pursuant to this chapter. Persons convicted of violating a provision of this chapter are guilty of a simple misdemeanor.

2. In addition to criminal penalties, the department may impose a civil penalty not to exceed one thousand dollars on a person who violates a provision of this chapter or a rule or order issued under this chapter, or a term, condition, or limitation of a license or registration certificate issued under this chapter, or who commits a violation for which a license or registration certificate may be revoked under rules issued pursuant to this chapter. Each day of continuing violation constitutes a separate offense in computing the civil penalty.

3. The department shall notify a person of the intent to impose a civil penalty against the person. The notice shall be by registered or certified mail to the person's last known address and shall state the date, facts, the nature of the act or omission leading to the charge, the specific statute, rule, or license or registration provision involved, and the amount of the penalty the department proposes to impose. The notice shall advise the person that upon failure to pay the civil penalty, the penalty may be collected by civil action. The person shall have the opportunity to respond in writing, within a reasonable time as the department shall establish by rule, why the civil penalty should not be imposed.

4. The department may compromise, mitigate, or remit a civil penalty imposed under this section. A person upon whom a civil penalty is imposed may appeal the action pursuant to chapter 17A. The department shall remit moneys collected from civil penalties to the treasurer of state who shall deposit the moneys in the general fund of the state.

[C79, 81, §136C.4]

84 Acts, ch 1286, §12

136C.5 Enforcement.

1. Upon determination by the department that this chapter or any rule adopted pursuant to this chapter has been or is being violated, the department may order that the radiation machine or radioactive material not be used until the necessary corrective action has been taken. If the use of the radiation machine or radioactive material continues in violation of the order of the department, the department may request the county attorney or the attorney general to

make an application in the name of the state to the district court of the county in which the violations may have occurred for an order to enjoin the violations or practices.

2. The department may impound or order the impounding of radioactive material in the possession of a person who is not equipped to observe or fails to observe a provision of this chapter or of a rule adopted under this chapter.

3. The department may enter at reasonable times any private or public property to determine whether there is a violation of a provision of this chapter or of a rule issued under this chapter. However, the department must have the consent of the federal government before entering an area under the jurisdiction of the federal government.

4. The department may inspect records required to be kept under section 136C.3, subsection 9. Upon request of the department a person shall submit the records to the department for inspection.

[C79, 81, §136C.5]

84 Acts, ch 1286, §13

Referred to in §331.756(29)

136C.6 Reserved.

136C.7 Acceptance of funds.

The department may accept from any source loans, grants, gifts, or other funds to be used for programs authorized by this chapter.

84 Acts, ch 1286, §2

136C.8 Inspections.

The department shall inspect all radiation machines and radioactive materials located in this state, for the purpose of detecting, abating, or eliminating excessive radiation exposure hazards. The inspection shall include but shall not be limited to an evaluation of the radiation machine or radioactive material as well as the immediate environment to ensure that in using the machines or materials all unnecessary hazards for patients, personnel, and other persons who may be exposed to radiation produced by the machine or materials are avoided. The inspection shall also include an evaluation of electrical hazards as well as the adequacy of mechanical supporting and restraining devices. All defects and deficiencies noted by the inspector shall be fully disclosed and discussed with the responsible persons at the time of inspection. The department shall establish rules prescribing operating procedures for radiation machines and radioactive materials which ensure minimum radiation exposure to patients, personnel, and other persons in the immediate environment.

84 Acts, ch 1286, §3

136C.9 Registration and license requirements.

1. The department shall establish by rule a system for the registration of the possession of radiation machines and for the licensing of radioactive materials in the state. The rules may provide for the issuance of the following licenses:

a. General licenses which do not require the filing of an application or the issuance of a document but do permit designated persons to transfer, acquire, own, possess or use quantities of or equipment using radioactive materials.

b. Specific licenses issued upon application to a person named in the license to use, manufacture, produce, transfer, receive, acquire, or possess quantities of or equipment using radioactive material.

2. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements when the department finds that the exemption of the source of radiation, use, or users will not pose a significant risk to the health and safety of the public. The rules may provide for recognition of other state or federal licenses as the department may allow, subject to registration requirements as the department may prescribe.

3. A person shall not use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any radioactive material without a license from the department as provided in this chapter.

84 Acts, ch 1286, §4

136C.10 Fees.

The department shall establish and collect fees for the licensing and amendment of licenses for radioactive materials, the registration of radiation machines, and the periodic inspection of radiation machines and radioactive materials. Fees shall be in amounts sufficient to defray the cost of administering this chapter. The license fee may include the cost of environmental surveillance activities to assess the radiological impact of activities conducted by licensees. Fees collected shall be remitted to the treasurer of state who shall deposit the funds in the general fund of the state. When a registrant or licensee fails to pay the applicable fee the department may suspend or revoke the registration or license or may issue an appropriate order. Fees for the license, amendment of a license, and inspection of radioactive material shall not exceed the fees prescribed by the United States nuclear regulatory commission.

84 Acts, ch 1286, §5

136C.11 Federal-state agreements.

1. The governor, on behalf of the state, may enter into an agreement with the United States nuclear regulatory commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended to July 1, 1984, providing for the discontinuation of certain federal licensing and related regulatory authority over byproduct, source, and special nuclear material and the assumption of regulatory authority over these materials by the state.

2. A person who, on the effective date of an agreement made under subsection 1, possesses a license issued by the United States nuclear regulatory commission for radioactive material that comes under the agreement is considered to possess the license re-

quired under this chapter. The license shall expire either ninety days after receipt from the department of a notice of expiration of the license, or on the date of expiration specified in the license issued by the nuclear regulatory commission, whichever is earlier.

84 Acts, ch 1286, §6

136C.12 Conflicting laws.

This chapter does not preempt ordinances, resolutions, or rules of a local government or of a state agency relating to radioactive material that are consistent with this chapter. This chapter does not give the department the authority to regulate a facility for the disposal of low-level radioactive waste as defined in article II of section 8C.1.

84 Acts, ch 1286, §7

136C.13 Emergencies.

If the department finds that an emergency exists involving radioactive material or radiation machines that requires immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order stating that an emergency exists and requiring that action be taken as necessary to meet the emergency. An emergency order shall be effective immediately. A person to whom the order is directed shall comply with the order immediately, but on application to the department shall be afforded a hearing within ten days of the date application is made. The emergency order may be continued, modified, or revoked within thirty days after the hearing, based on the evidence presented at the hearing.

84 Acts, ch 1286, §8

136C.14 Qualified operators — display of credentials.

1. A person, other than a licensed professional, shall not operate equipment or use materials for medical treatment or diagnostic purposes unless that person has completed a course of instruction approved by the department or has otherwise met the minimum training established by the department.

2. A person, other than a licensed professional, who operates equipment or uses materials for medical treatment or diagnostic purposes shall display the credentials which indicate that person's qualification to operate equipment or use materials in the immediate vicinity of the equipment or where the materials are stored. A person who owns or controls the equipment or materials is also responsible for the proper display of credentials of those who operate the equipment or use the materials and shall not employ a person to operate equipment or use materials for medical treatment or diagnostic purposes except as provided in this section.

84 Acts, ch 1286, §9

It shall be lawful to place political signs on private property with permission of the owner or person in charge of the property at any time during the period beginning twenty-one days before the date of the election to which the signs pertain and ending on the day of the election, if such placement would otherwise be a violation of this chapter. This section shall not be construed to authorize placement of any political sign at any location where it may, because of its size, location, content or coloring, constitute a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, by detracting from the visibility of any traffic-control device or by being confused with an authorized traffic-control device. This section is in addition to provisions of this chapter relating to the placement of political signs which shall expire on the seventh day following the date of the election to which the signs pertain. A municipal corporation shall adopt no ordinance which prohibits the placement of political signs on private property as permitted by this section during the period beginning twenty-one days before the date of the election to which the signs pertain, nor

requires removal of the political signs so placed less than seven days after the date of that election.
[C77, 79, 81, §306C.22]

306C.23 Special event signs

It is lawful to place a special event sign on private property with permission of the owner or person in charge of the property at any time during the period beginning thirty days prior to the date of the special event to which the sign pertains and ending on the day of the special event. Special event signs shall be removed not later than twenty-four hours following the end of the special event. This section does not authorize placement of a special event sign at a location where it may, because of its size, location, content, coloring or lighting, constitute a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, by detracting from the visibility of a traffic-control device or by being confused with an authorized traffic-control device.
[C81, §306C.23]

CHAPTER 307

DEPARTMENT OF TRANSPORTATION

Referred to in §307.24

- 307.1 Definitions.
- 307.2 Department of transportation.
- 307.3 Transportation commission.
- 307.4 Conflict of interest.
- 307.5 Vacancies on commission.
- 307.6 Compensation — commission members.
- 307.7 Commission meetings.
- 307.8 Expenses.
- 307.9 Removal from office.
- 307.10 Duties of commission.
- 307.11 Director of transportation — qualifications — salary.
- 307.12 Duties of the director.
- 307.13 Reassignment of personnel.
- 307.14 Divisions of the department.
- 307.15 Transportation regulation authority — superintendent.
- 307.16 Vacancy.
- 307.17 Compensation of superintendent.

- 307.18 Duties of authority members.
- 307.19 Proceedings.
- 307.20 Enforcement.
- 307.21 Administration division.
- 307.22 Planning division.
- 307.23 General counsel division.
- 307.24 Highway division.
- 307.25 Public transportation division.
- 307.26 Railroad transportation division.
- 307.27 Transportation regulation and safety division.
- 307.28 Prorating departmental costs.
- 307.29 Collection of delinquent railway taxes — compromise.
- 307.30 Federal tax compliance.
- 307.31 to 307.34 Reserved.
- 307.35 Inspectors to perform several functions.
- 307.36 Project needs — retention of property.
- 307.37 Odometer law enforcement.
- 307.38 Public transit loan.

307.1 Definitions.

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

1. "Director" means the director of transportation or the director's designee.
2. "Department" means the state department of transportation.
3. "Commission" means the state transportation commission.

4. "Authority" means the transportation regulation authority, and "superintendent" means the superintendent of the authority.
[C75, 77, 79, 81, §307.1, 81 Acts, ch 22, §2]

307.2 Department of transportation.

There is created a state department of transportation which shall be responsible for the planning, development, regulation and improvement of transportation in the state as provided by law.
[C75, 77, 79, 81, §307.2]

307.3 Transportation commission.

There is created a state transportation commission which shall consist of seven members, not more than four of whom shall be from the same political party. The governor shall appoint the members of the state transportation commission for a term of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate.

The commission shall meet in May of each year for the purpose of electing one of its members as chairperson.

[SS15, §1527-s; C24, 27, 31, 35, 39, §4622, 4623; C46, 50, 54, 58, 62, 66, 71, 73, §307.1, 307.2; C75, 77, 79, 81, §307.3]

83 Acts, ch 101, §67

Confirmation, §2.32

307.4 Conflict of interest.

A person shall not serve as a member of the state transportation commission who has an interest in a contract or job of work or material or the profits thereof or service to be performed for the department. Any member of the state transportation commission who accepts employment with or acquires any stock, bonds, or other interest in any company or corporation doing business with the department shall be disqualified from remaining a member of the state transportation commission.

[C75, 77, 79, 81, §307.4]

307.5 Vacancies on commission.

Any vacancy shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

In the event the governor fails to make an appointment to fill a vacancy or fails to submit the appointment to the senate for confirmation as required by section 2.32, the senate may make the appointment prior to adjournment of the general assembly.

[SS15, §1527-s; C24, 27, 31, 35, 39, §4624; C46, 50, 54, 58, 62, 66, 71, 73, §307.3; C75, 77, 79, 81, §307.5]

307.6 Compensation — commission members.

Each member of the commission shall receive a salary as fixed by the general assembly.

[SS15, §1527-s1; C24, 27, 31, 35, 39, §4625; C46, 50, 54, 58, 62, 66, 71, 73, §307.4; C75, 77, 79, 81, §307.6]

307.7 Commission meetings.

The commission shall meet at the call of the chairperson or when any four members of the commission file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the commission. A majority of the commission members shall constitute a quorum.

[C75, 77, 79, 81, §307.7]

307.8 Expenses.

Members of the commission, the director, and other employees of the department shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the department shall be subject to the budget requirements of chapter 8.

[C75, 77, 79, 81, §307.8]

307.9 Removal from office.

Any member of the commission may be removed for any of the causes and in the manner provided in chapter 66 and such removal shall not be in lieu of any other punishment that may be prescribed by the laws of this state.

[C75, 77, 79, 81, §307.9]

307.10 Duties of commission.

The commission shall:

1. Develop and co-ordinate a comprehensive transportation policy for the state not later than January 1, 1975, which shall be submitted to the general assembly for its approval, and develop a comprehensive transportation plan by January 1, 1976, to be submitted to the governor and the general assembly, and to update the transportation policy and plan annually.

2. Promote the co-ordinated and efficient use of all available modes of transportation for the benefit of the state and its citizens including, but not limited to, the designation and development of multimodal public transfer facilities if carriers or other private businesses fail to develop such facilities.

3. Identify the needs for city, county and regional transportation facilities and services in the state and develop programs appropriate to meet these needs.

4. Identify methods of improving transportation safety in the state and develop programs appropriate to meet these needs.

5. Adopt rules in accordance with chapter 17A as it deems necessary to transact its business and for the administration and exercise of its powers and duties.

6. Approve the budget of the department as prepared by the director, prior to submission of the budget to the governor and the general assembly.

7. Approve the reorganization of any existing divisions within the department.

8. Consider the energy and environmental issues in transportation development.

9. Enter into such contracts and agreements as provided in this chapter.

10. Provide for the receipt or disbursement of federal funds allocated to the state and its political subdivisions for transportation purposes.

11. Include in its annual or biennial budget all estimated federal funds to be received or allocated to the department.

The commission may adopt, after consultation with the department of water, air and waste management and the department of public safety, rules to enforce the rules regarding transportation of hazardous wastes promulgated by the water, air and waste management commission of the department of water, air and waste management under section 455B.412. 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.

[C75, 77, 79, 81, §307.10; 82 Acts, ch 1199, §92, 93, 96]

83 Acts, ch 9, §1, 8; 84 Acts, ch 1231, §1

Referred to in §307B.8

307.11 Director of transportation — qualifications — salary.

The commission shall appoint a director of transportation who shall serve at the pleasure of the commission and who shall in no event be a member of the commission. The director shall not hold any other office under the laws of the United States or of this or any other state or hold any other position for profit. The director shall not engage in any occupation, business, or profession interfering with or inconsistent with the director's duties, serve on or under any committee of any political party or contribute to the campaign fund of any person or political party. The director shall be appointed on the basis of executive and administrative abilities and shall devote the director's entire time to the duties of the position.

The director shall receive a salary as fixed by the general assembly.

[C75, 77, 79, 81, §307.11]

307.12 Duties of the director.

The director shall:

1. Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department.
2. Employ such personnel as are necessary to carry out the duties and responsibilities of the department, consistent with the provisions of chapter 19A and subject to the policies of the commission.
3. Assist the commission in developing state transportation policy and a state transportation plan and execute the policies adopted by the commission.
4. Establish temporary advisory boards of such size as the director deems appropriate to advise the department, subject to the approval of the commission.
5. Prepare a budget for the department, subject to the approval of the commission, and prepare reports required by law or required by the commission.
6. Appoint the deputy director of transportation and the administrators of the various divisions of the department, subject to the approval of the commission.
7. Review and submit legislative proposals necessary to maintain current state transportation laws.
8. Appoint hearing officers or designate department personnel or the board to conduct hearings required by law or administrative rule.
9. Enter into reciprocal agreements relating to motor vehicle inspections with authorized officials of any other state, subject to approval by the commission. The director may exempt or impose requirements upon nonresident motor vehicles consistent with those imposed upon vehicles of Iowa residents operated in other states.

[C75, 77, 79, 81, §307.12]

307.13 Reassignment of personnel.

The director may reassign personnel within the department among the various divisions of the department in order to properly co-ordinate the work of the divisions and perform the duties and responsibilities of the department efficiently and economically.

However, any employee so transferred or transferred from one employment system to another either administratively or legislatively, shall not be considered to be a probationary employee simply because of this action.

[C75, 77, 79, 81, §307.13]

307.14 Divisions of the department.

The following divisions are created within the department:

1. Transportation regulation authority.
2. Administration division.
3. Planning division.
4. General counsel division.
5. Highway division.
6. Public transportation division.
7. Transportation regulation and safety division.
8. Railroad transportation division.

[C75, 77, 79, 81, §307.14; 81 Acts, ch 22, §3]

307.15 Transportation regulation authority — superintendent.

The governor shall appoint a superintendent of the transportation regulation authority for a term of six years beginning and ending as provided by section 69.19, subject to confirmation by the senate. The appointee shall be selected solely on the basis of the person's qualifications and fitness to discharge the duties of office, and a person shall not qualify for appointment unless the person has at least five years experience in the transportation industry, or in the regulation of the types of carriers that are subject to regulation by the transportation regulation authority or the interstate commerce commission. The superintendent shall exercise the powers and perform the duties delegated to the authority.

[C75, 77, 79, 81, §307.15; 81 Acts, ch 22, §4]
Confirmation, §2.32

307.16 Vacancy.

A vacancy shall be filled in the same manner as the regular appointment is made for the unexpired portion of the regular term.

If the governor fails to make the appointment to fill a vacancy or fails to submit the appointment to the senate for confirmation as required by section 2.32, the senate may make the appointment prior to the adjournment of the general assembly.

[C75, 77, 79, 81, §307.16; 81 Acts, ch 22, §5]

307.17 Compensation of superintendent.

The superintendent shall receive a salary as fixed by the general assembly. The superintendent shall be allowed actual and necessary expenses in the same amounts paid to other state employees incurred in the performance of the superintendent's duties.

[C75, 77, 79, 81, §307.17; 81 Acts, ch 22, §6]

307.18 Duties of authority members.

The transportation regulation authority has the following duties and responsibilities:

1. Fix and approve rates, fares, and charges of common carriers regulated by chapters 325, 327, 327A and 327D.
2. Issue certificates of public convenience and necessity pursuant to the provisions of chapters 325 and 327A.
3. Fix and approve rates, fares, and charges of railroads and conduct safety and service permission hearings with respect to railroads regulated by chapters 327C to 327H.
4. Appoint counsel as it deems necessary. The counsel has the following duties and responsibilities:

a. Investigate the legality of all rates, charges, tariffs, rules, regulations and practices of all common carriers and persons under the jurisdiction of the authority, and institute civil proceedings before the authority or any proper court to correct any illegality on the part of any common carrier and prosecute the proceedings to final determination.

b. Investigate the reasonableness of rates, tariffs, charges, rules, regulations and practices of all such common carriers in interstate transportation when directed by the authority, or when in the authority's judgment they are unlawful, prejudicial, and discriminate against any city, community, business, industry or citizen of the state and institute before the interstate commerce commission or any other tribunal having jurisdiction and prosecute to final determination any proceeding growing out of such matters.

5. Approve any ordinance or resolution adopted by a political subdivision of this state which relates to the speed of a train in an area within the jurisdiction of the political subdivision. Any speed ordinance or resolution adopted by a political subdivision of the state prior to July 1, 1975 which has not been approved by the Iowa state commerce commission shall be referred to the authority by the political subdivision and shall be in full force and effect upon approval of the ordinance or resolution by the authority. This subsection does not abrogate, modify, or alter any historical or contractual agreement between a political subdivision of the state and a railroad corporation in existence on July 1, 1975.

[S13, §2121-I; C24, 27, 31, 35, 39, §7919; C46, 50, 54, 58, 62, 66, 71, 73, §475.7; C75, 77, 79, 81, §307.18; 81 Acts, ch 22, §7, 22]

307.19 Proceedings.

The transportation regulation authority shall conduct hearings pursuant to rules adopted under chapter 17A.

[C75, 77, 79, 81, §307.19; 81 Acts, ch 22, §8]

307.20 Enforcement.

The department is responsible for the enforcement of all orders issued by the authority.

[C75, 77, 79, 81, §307.20; 81 Acts, ch 22, §9]

307.21 Administration division.

The administrator of the administration division shall have the following duties and responsibilities:

1. Provide for the proper maintenance and protection of the grounds, buildings and equipment of the department, in co-operation with the department of general services.

2. Establish, supervise and maintain a system of centralized electronic data processing for the department, in co-operation with the department of general services.

3. Assist the director in preparing the departmental budget.

4. Provide centralized purchasing services for the department, in co-operation with the department of general services.

5. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in co-operation with the merit employment department

and provide personnel services, including but not limited to training, safety education and employee counseling.

6. Assist the director in co-ordinating the responsibilities and duties of the various divisions within the department.

7. Carry out all other general administrative duties for the department.

8. Perform such other duties and responsibilities as may be assigned by the director.

The administrator of the administration division may purchase items from the department of general services and may co-operate with the director of general services by providing centralized purchasing services for the department of general services.

[C75, 77, 79, 81, §307.21]

307.22 Planning division.

The administrator of the planning division shall have the following duties and responsibilities:

1. Assist the director in planning all modes of transportation in order to develop an integrated transportation system providing adequate transportation services for all citizens of the state.

2. Develop and maintain transportation statistical data for the department.

3. Assist the director in establishing, analyzing and evaluating alternative transportation policies for the state.

4. Co-ordinate the planning division's duties and responsibilities with the planning functions carried on by other divisions of the department.

5. Perform such other planning functions as may be assigned by the director.

The planning functions of this division shall not include the detailed design of highways or other modal transportation facilities, but shall be restricted to the needs of this state for multimodal transportation systems.

[C75, 77, 79, 81, §307.22]

307.23 General counsel division.

The general counsel shall be a special assistant attorney general appointed by the attorney general who shall act as the attorney for the department and the general counsel shall have the following duties and responsibilities:

Act as legal advisor to the commission, the director and the various divisions of the department and provide all legal services for the department except for those provided to the board by its counsel.

The attorney general shall appoint such additional assistant attorneys general as the commission deems necessary to carry out the duties assigned to the general counsel division. The salary of the general counsel shall be fixed by the commission, subject to the approval of the attorney general. The commission shall provide and furnish a suitable office for the general counsel upon request of the attorney general.

[SS15, §1527-s, -s2; C24, 27, §307.8; C31, 35, §4630, 4630-c; C39, §4630, 4630.1; C46, 50, 54, 58, 62, 66, 71, 73, §307.8, 307.9; C75, 77, 79, 81, §307.23]

307.24 Highway division.

The administrator of the highway division shall be responsible for the planning, design, construction and

maintenance of the state primary highways and shall administer the provisions of chapters 306 to 320 and perform such other duties as may be assigned by the director. There shall be a subdivision for urban systems, a subdivision for secondary roads, and such other subdivisions as may be necessary within the highway division.

[C75, 77, 79, 81, §307.24]

307.25 Public transportation division.

The administrator of the public transportation division shall have the following duties and responsibilities:

1. Advise and assist the director in the development of aeronautics, including but not limited to the location of air terminals, accessibility of air terminals by other modes of public transportation, protective zoning provisions considering safety factors, noise, and air pollution, facilities for private and commercial aircraft, air freight facilities and such other physical and technical aspects as may be necessary to meet present and future needs.

2. Advise and assist the director in the development of river transportation and port facilities in the state.

3. Advise and assist the director in the study of local and regional transportation of goods and people including intracity and intercity bus systems, dial-a-bus facilities, rural and urban bus and taxi systems, the collection of data from these systems, feasibility study of increased government subsidy assistance and determination of the allocation of such subsidies to each mass transportation system, such other physical and technical aspects which may be necessary to meet present and future needs and apply for, accept and expend federal, state or private funds for the improvement of mass transit.

4. Advise and assist the director to study and develop highway transport economics to assure availability and productivity of highway transport services.

5. Administer the provisions of chapters 322A, 325, 327, 327A, 327B, 328, 329 and 330.

6. Perform such other duties and responsibilities as may be assigned by the director and the commission.

[C75, 77, 79, 81, §307.25]

307.26 Railroad transportation division.

The administrator of the railroad transportation division shall have the following duties and responsibilities:

1. Advise and assist the director in conducting research on the basic railroad problems and identify the present capability of the existing railroads in order to determine the present obligation of the railroads to provide acceptable levels of public service.

2. Advise and assist the director in the development of rail transportation systems for expansion of passenger and freight services.

3. Advise and assist the director in developing programs in anticipation of railroad abandonment, including:

- a. Development and evaluation of programs which will encourage improvement of rail freight and the upgrading of rail lines in order to improve freight service.

- b. Development of alternative modes of transportation to areas and communities which lose rail service.

- c. Advise the director when it may appear in the best interest of the state to assume the role of advocate in railroad abandonments and railroad rate schedules.

4. Develop and maintain a federal-state relationship of programs relating to railroad safety enforcement, track standards, rail equipment, operating rules and transportation of hazardous materials.

5. Advise and assist the director in the conduct of research on railroad-highway grade crossings and encourage and develop a safety program in order to reduce injuries or fatalities including, but not limited to, the following:

- a. The implementation of a program of constructing rumble strips at grade crossings on selected hard surface roads.

- b. The establishment of standards for warning devices for particularly hazardous crossings or for classes of crossings on highways, which standards are designed to reduce injuries, fatalities and property damage. Such standards shall regulate the use of warning devices and signs which shall be in addition to the requirements of section 327G.2. Implementation of such standards shall be the responsibility of the government agency or department or political subdivision having jurisdiction and control of the highway and such implementation shall be deemed adequate for the purposes of railroad grade crossing protection. The department, or the political subdivision having jurisdiction, may direct the installation of temporary protection while awaiting installation of permanent protection. A railroad crossing shall not be found to be particularly hazardous for any purpose unless the department has determined it to be particularly hazardous.

6. Apply for, accept, and expend federal, state or private funds for the improvement of rail transportation.

7. Advise and assist the director on studies for co-ordination of railway service with that of other transportation modes.

8. Advise and assist the director with studies of regulatory changes deemed necessary to effectuate economical and efficient railroad service.

9. Advise and assist the director regarding agreements with railroad corporations for the restoration, conservation or improvement of railroad as defined in section 327D.2, subsection 1, on such terms, conditions, rates, rentals, or subsidy levels as may be in the best interest of the state. The commission may enter into contracts and agreements which are binding only to the extent that appropriations have been or may subsequently be made by the legislature to effectuate the purposes of this subsection.

10. Administer the provisions of chapters 327D to 327H.

11. Perform such other duties and responsibilities as may be assigned by the director and the commission.

12. Advise and assist in the establishment and development of railroad districts upon request.

13. Conduct innovative experimental programs relating to rail transportation problems within the state.

14. Enter the role of "applicant" pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976, United States Public Law 94-210, and take such actions as are necessary to accomplish this role.

15. Identify those segments of railroad trackage which, if improved, may provide increased transportation services for the citizens of this state. The department shall develop and implement programs to encourage the improvement of rail freight services on such railroad trackage.

[C75, 77, §307.26, 327H.19; C79, 81, §307.26]
Referred to in §321.342

307.27 Transportation regulation and safety division.

The administrator of the transportation regulation and safety division shall have the following duties and responsibilities:

1. Administer and supervise the registration of motor vehicles pursuant to chapter 321.

2. Administer and supervise the licensing of motor vehicle manufacturers, distributors and dealers pursuant to chapter 322.

3. Administer the inspection of motor vehicles pursuant to chapter 321.

4. Administer motor vehicle registration reciprocity pursuant to chapter 326.

5. Administer the provisions of chapters 321A, 321B, 321E and 321F relating to motor vehicle financial responsibility, the implied consent law, the movement of vehicles of excessive size and weight and the leasing and renting of vehicles.

[C75, 77, 79, 81, §307.27]

307.28 Prorating departmental costs.

The director shall, with the approval of the commission, prorate the costs of the department which will be expended for highways and such costs shall be paid from money appropriated from the road use tax fund. Prorated costs payable from the road use tax fund shall be based upon that portion of the commission's duties related to the construction, maintenance, and supervision of the public highways within the state or for the payment of bonds issued for the construction of public highways and the payment of interest on such bonds. The general assembly shall appropriate from the general fund of the state the remaining necessary departmental costs.

[C75, 77, 79, 81, §307.28]

307.29 Collection of delinquent railway taxes — compromise.

1. Sixty days after the tax obligations of a railway company which are owed become delinquent as provided in section 445.37 and remain unpaid, the state department of transportation shall become responsible for collection of the delinquent taxes. The county treasurer of each affected county shall transmit the unpaid tax statement of the railway company to the state department of transportation.

2. The transportation regulation authority shall consolidate and collect all delinquent tax obligations of a railway company received from the counties. The transportation regulation authority may compromise the delinquent taxes against the railway company property and by written agreement with the railway company agree to the payment of a stipulated sum in

full liquidation of all delinquent taxes included in the agreement and may accept title to any right of way or other real estate in this state owned by the railway company in payment for the delinquent taxes.

3. Upon the acquisition by the department of payment from the railway company in full liquidation of the delinquent taxes including payment by means of transfer of title to rights of way or other real estate, any tax lien existing prior to the acquisition on the property on which the taxes were delinquent is void. The department shall take title to the rights of way or other real estate for administration, management, collection of rents, and disposal and shall credit all moneys collected or received from the rental or disposal of rights of way or other real estate to the special railroad facility fund established in section 307B.23. Any moneys received as payment for delinquent property taxes shall be credited to the special railroad facility fund established in section 307B.23.

[C81, §307.29; 81 Acts, ch 22, §22; 81 Acts 2d Ex, ch 3, §1]

Referred to in §307B.9, 307B.23

307.30 Federal tax compliance.

The department shall adopt rules under chapter 17A to provide for certification of federal heavy vehicle use tax collections required by the Surface Transportation Assistance Act of 1982.

83 Acts, ch 9, §2, 8

307.31 to 307.34 Reserved.

307.35 Inspectors to perform several functions.

The department shall institute a program to combine inspection functions where feasible and to train construction inspectors to perform several inspection functions to reduce the number of construction inspectors employed by the department and the number of construction inspectors required for each construction project.

[81 Acts 2d Ex, ch 2, §2]

307.36 Project needs — retention of property.

It is the intent of the general assembly that not later than July 1, 1992, the state department of transportation shall dispose of all right-of-way owned by the department and not needed for projects. In determining need, the department shall consider both its five-year program requirements and its long-range, statewide corridor development needs. In determining need based upon long-range, statewide corridor development, the department shall give careful consideration to economically depressed urban areas not served directly by the national system of interstate and defense highways.

83 Acts, ch 114, §1

307.37 Odometer law enforcement.

The department shall investigate and prosecute violators of the state and federal odometer law. The department shall refer available evidence concerning a possible violation of section 321.71 or the federal odometer law or a rule or order issued under section 321.71 or the federal odometer law to the attorney general. The attorney general, with or without the referral, may institute appropriate criminal proceedings or may direct the case to the appropriate county

attorney to institute appropriate criminal proceedings. The attorney general may use those funds available to the department for this purpose and law enforcement agencies may be reimbursed for expenses incurred in the enforcement of the state and federal odometer laws with the approval of the attorney general and concurrence by the department.

84 Acts, ch 1305, §45

307.38 Public transit loan.

Notwithstanding the provisions of section 423.24, there is transferred from revenues collected under chapter 423 during the fiscal year beginning July 1, 1983 and ending June 30, 1984, from the use tax imposed on motor vehicles, trailers and motor vehicle

accessories and equipment under section 423.7 the sum of one million dollars which shall be transferred to the state department of transportation for public transit assistance for the fiscal year beginning July 1, 1983 and ending June 30, 1984. The funds transferred under this section to the state department of transportation for public transit assistance shall be considered an interest-free loan of funds to be received for public transit assistance under the Surface Transportation Assistance Act of 1982 and the road use tax fund shall receive reimbursement of the loan during the fiscal period beginning July 1, 1984 and ending June 30, 1989.

84 Acts, ch 1309, §9

CHAPTER 307A

TRANSPORTATION COMMISSION

Referred to in §307.24

307A.1 Definitions.

307A.2 Duties.

307A.3 Federal donations.

307A.4 Federal appropriations.

307A.5 State-owned lands — assessment.

307A.6 Repealed by 66GA, ch 1176, §6.

307A.7 Materials and equipment revolving fund.

307A.8 Longevity pay prohibited.

307A.1 Definitions.

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

1. "Commission" means the state transportation commission of the state department of transportation.

2. "Department" means the state department of transportation.

[C75, 77, 79, 81, §307A.1]

307A.2 Duties.

Said commission shall:

1. Devise and adopt standard plans of highway construction and furnish the same to the counties and provide information to the counties on the maintenance practices and policies of the department.

2. Furnish information and instruction to, answer inquiries of, and advise with, highway officers on matters of highway construction and maintenance and the reasonable cost thereof.

3. When in the interest of the state, the commission may allow a subsistence expense to an employee of the highway division of the department for continuous stay in one location while on duty away from established headquarters and place of domicile or either for a period not to exceed forty-five days; allow automobile expenses in accordance with section 18.117, for moving an employee and the employee's family from place of present domicile to new domicile, and actual transportation expense for moving of household goods. Such household goods shall not include pets or animals.

Similar provision, §79.16

4. Make surveys, plans, and estimates of cost, for the elimination of danger at railroad crossings on highways, and confer with local and railroad officials with reference to elimination of the danger.

5. Assist the board of supervisors and the department general counsel in the defense of suits wherein infringement of patents, relative to highway construction, is alleged.

6. Make surveys for the improvement of highways upon or adjacent to state property when requested by the board or department in control of said lands.

7. Record all important operations of said commission and, at the time provided by law, report the same to the governor.

8. Incur no expense to the state by sending out road lecturers.

9. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, other than railroad signals or crossing lights, located adjacent to a primary road and within three hundred feet of a railroad crossing at grade, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of trains or in observing signs erected for the purpose of giving warning of such railroad crossing.

10. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, located adjacent to a primary road and within three hundred feet of an intersection with another

attributable to use for the propulsion of a railway vehicle in this state, it shall be entitled to file with the department a statement of objections and of such alternative method of determining fuel use in this state as it believes to be proper under the circumstances. If the department concludes that the mileage formula, in fact, does not properly attribute fuel use to the state, it shall redetermine the number of gallons of fuel by such methods as seems best to determine and assign to the state the portion of fuel reasonably consumed in this state.

[81 Acts 2d Ex, ch 3, §26]

Referred to in §324A.6

324A.6 Annual payment of certain liabilities.

Notwithstanding the requirement for monthly payment of the excise tax imposed by §324A.3 and 324A.5, if it is reasonably determined as determined by rules prescribed by the director, that a railroad company's annual tax liability will not exceed one thousand two hundred dollars for a calendar year, the railroad company, on request and the director may grant permission in lieu of the requirement for monthly payment that the tax shall be payable on a calendar year basis. The tax is due and payable no later than Janu-

ary 31 following each calendar year in which the railroad company carried on business.

[82 Acts, ch 1260, §61]

324A.7 Records retained.

Records reasonably required by the department shall be retained by the railroad company for three years.

[81 Acts 2d Ex, ch 3, §27]

324A.8 Statutes applicable.

The department shall administer the taxes imposed by this chapter in the same manner as and subject to the provisions of chapter 324.

[81 Acts 2d Ex, ch 3, §28]

324A.9 Deposits and revenues.

The net proceeds of the excise tax imposed on the use of fuel in railway vehicles and any penalties collected under this chapter shall be credited to the special railroad facility fund established in section 307B.23.

[81 Acts 2d Ex, ch 3, §29]

Referred to in §307B.23

CHAPTER 325

MOTOR VEHICLE CERTIFICATED CARRIERS

Referred to in §307.18, 307.25, 327.1(6), 327A.4, 327A.5(3)

- 325.1 Definitions.
- 325.2 Special powers of authority.
- 325.3 General powers.
- 325.4 Statutes applicable.
- 325.5 Rates.
- 325.6 Certificate of convenience and necessity — exemption for transit systems.
- 325.7 When certificate to be issued.
- 325.8 Financial ability of applicant.
- 325.9 Conditions.
- 325.10 Amendment or revocation.
- 325.11 Rules of procedure.
- 325.12 Application for certificate.
- 325.13 Protests against applications.
- 325.14 to 325.16 Repealed by 66GA, ch 1174, §15.
- 325.17 Testimony receivable.
- 325.18 Granting application.
- 325.19 Expense of hearing.
- 325.20 Repealed by 66GA, ch 1174, §15.

- 325.21 Judicial review.
- 325.22 to 325.24 Repealed by 66GA, ch 1090, §211.
- 325.25 Transfer of certificate.
- 325.26 Liability insurance and bond — proof of solvency.
- 325.27 Powers of cities.
- 325.28 Safe and sanitary condition of vehicle.
- 325.29 Driver of vehicle.
- 325.30 Riding on outside part.
- 325.31 Distinctive markings on vehicle.
- 325.32 Additional rules.
- 325.33 Cancellation of certificate.
- 325.34 Simple misdemeanor — penalty.
- 325.35 Certificate conditioned on fee.
- 325.36 Use of fees.
- 325.37 Safety equipment and regulations for all truck operators.
- 325.38 Additional requirements.
- 325.39 Violations.

325.1 Definitions.

When used in this chapter:

1. The term "motor vehicle" shall mean any automobile, automobile truck, motorbus, or other self-propelled vehicle, including any trailer, semitrailer, or other device used in connection therewith not oper-

ated upon fixed rails or track, used for the public transportation of freight or passengers for compensation between fixed termini, or over a regular route, even though there may be occasional, periodic, or irregular departures from such termini or route; except those owned by school corporations or used exclusively in conveying school children to and from schools.

2. The term "motor carrier" shall mean any person operating any motor vehicle upon any highway in this state.

3. The term "highway" shall mean every street, road, bridge, or thoroughfare of any kind in this state.

4. "Authority" means the transportation regulation authority of the state department of transportation.

5. "Department" means the state department of transportation.

6. The term "charter" means the agreement whereby the owner of a motorbus lets the same to a group of persons as one party for a specified sum and for a specified act of transportation at a specified time and over an irregular route.

7. The term "charter carrier" means a person who engages in the business of transporting the public by motorbuses under charter. The term "charter carrier" shall not be construed to include taxicabs or persons, firms or corporations having a license, contract or franchise with an Iowa municipality with a population of more than fifteen thousand people as shown by the last federal decennial census, to carry or transport passengers for hire, or a municipality with a population of more than fifteen thousand people as shown by the last federal decennial census, engaged in the business of carrying or transporting passengers for hire, provided however, that municipality or the person, firm or corporation having a license, contract or franchise with an Iowa municipality comply with sections 325.26, 325.28, 325.29, 325.31 and 325.35, or school bus operators when engaged in transportation involving any school activity or regular route common carriers of passengers.

8. The term "carpool" means transportation of a group of at least two riders in a vehicle having a seating capacity for not more than eight passengers between a rider's or the owner-operator's residence or other designated location and a rider's or the owner-operator's place of employment or other common destination of the group, when the vehicle is driven by one of the members of the group.

9. The term "vanpool" means transportation of a group of riders in a vehicle having a seating capacity for not less than eight passengers and not more than fifteen passengers between a rider's or the owner-operator's residence or other designated location and a rider's or the owner-operator's place of employment or other common destination of the group, when the vehicle is driven by one of the members of the group.

10. "Regional transit system" means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

[C24, §5094; C27, 31, 35, §5105-a1; C39, §5100.01;

C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.1; 81 Acts, ch 22, §22]

84 Acts, ch 1253, §8

325.2 Special powers of authority.

The authority shall:

1. Fix or approve the rates, fares, charges, classifications, and rules pertaining thereto, of each motor carrier.

2. Regulate and supervise the accounts, schedules, and service of each motor carrier.

3. Prescribe a uniform system and classification of accounts to be used, which among other things shall provide for the setting up of adequate depreciation charges, and after such accounting system shall have been promulgated, motor carriers shall use no other.

4. Require the filing of annual and other reports.

5. Supervise and regulate motor carriers in all other matters affecting the relationship between such carriers and the traveling and shipping public.

[C24, §5095; C27, 31, 35, §5105-a2; C39, §5100.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.2; 81 Acts, ch 22, §10, 22]

325.3 General powers.

The authority may by general order or otherwise prescribe rules and regulations applicable to motor carriers. The department may prescribe and enforce safety regulations in the operation of motor carriers and require a periodic inspection of the equipment of every motor carrier from the standpoint of enforcement of safety regulations, and the equipment is at all times subject to inspection by properly authorized representatives of the department.

[C24, §5095, 5104; C27, 31, 35, §5105-a3; C39, §5100.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.3; 81 Acts, ch 22, §11]

325.4 Statutes applicable.

All control, power, and authority over railroads and railroad companies now vested in the authority, insofar as the same is applicable, are hereby specifically extended to include motor carriers.

[C27, 31, 35, §5105-a4; C39, §5100.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.4; 81 Acts, ch 22, §22]

325.5 Rates.

All charges made by any motor carrier for any service rendered or to be rendered in the public transportation of passengers or property, or in connection therewith, shall be just, reasonable and nondiscriminating, and every unjust, unreasonable, or discriminating charge for such service or any part thereof is prohibited and declared unlawful.

[C24, §5096; C27, 31, 35, §5105-a5; C39, §5100.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.5]

325.6 Certificate of convenience and necessity — exemption for transit systems.

1. It is unlawful for any motor carrier, except a person operating a motor vehicle in a carpool or vanpool, to transport over a regular route or between fixed termini any person or property, for compensation, from any point or place in the state to another point or place in the state irrespective of the route,

highway or highways traversed, including the crossing of any state line of the state, or the ticket or bill of lading issued and used for such transportation, without first having obtained from the authority a certificate declaring that public convenience and necessity require such operation. An Iowa urban transit system, as defined in section 324.57, subsection 9, may operate within the metropolitan area which it serves and between its service area and another city which is located not more than ten miles from its service area without obtaining a certificate of public convenience and necessity if the other city is not served by another carrier operating under a certificate of public convenience and necessity. A carrier of passengers shall not operate as a charter carrier in this state unless it possesses a certificate of convenience and necessity as a common carrier of passengers and operating in this state as such common carrier or possesses a certificate of convenience and necessity to engage in the business of a charter carrier.

2. The authority may allow the provision of temporary service for which there is an immediate and urgent need to a point or points requested by the applicant for a permanent certificate of public convenience and necessity upon investigation and a finding that the point or points do not have carrier service capable of meeting the need. The grant of temporary authority shall not become effective until the applicant has complied with the provisions of sections 325.26, 325.28 and 325.35 and the rules of the authority and unless suspended or revoked for good cause, shall be valid for such time as the authority shall specify but not more than an aggregate of one hundred eighty days. The grant of temporary authority shall create no presumption that the corresponding application will be granted.

3. A regional transit system providing primarily passenger service for transportation of disadvantaged persons as defined in section 601J.1 is exempt from certification requirements of this section if it satisfies each of the following requirements:

a. The regional transit system is not a corporation organized for profit under the laws of Iowa or any other state or the regional transit system is a governmental organization.

b. The regional transit system receives any operating funds from federal, state or local government sources.

c. The regional transit system does not duplicate a transportation service provided by a regional transit system issued a certificate of convenience and necessity.

Each regional transit system exempt under this subsection shall comply with all safety, insurance and other rules of the department pertaining to a publicly funded transit system.

[C24, §5097; C27, 31, 35, §5105-a6; C39, §5100.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.6; 81 Acts, ch 22, §22, ch 108, §5]

84 Acts, ch 1253, §9

325.7 When certificate to be issued.

Before a certificate shall be issued, the authority shall, after a public hearing, make a finding that the service proposed to be rendered will promote the public convenience and necessity. If such finding be made, it shall be its duty to issue a certificate.

The authority may issue a certificate, without holding a public hearing, if the service proposed will promote the public convenience and necessity and the service would not be provided if the expense of a public hearing was placed upon the applicant.

If a certificate is to be issued without a public hearing, the authority shall publish notice of its action, at its own expense, in the same manner as provided in section 325.13. Written objections to the issuance of a certificate without holding a hearing may be filed within ten days of last publication of notice. If no objections are filed within ten days of last publication of the notice, the authority may proceed to issue the certificate in the manner provided in section 325.18.

[C24, §5097; C27, 31, 35, §5105-a7; C39, §5100.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.7; 81 Acts, ch 22, §22]

Referred to in §327A.3

325.8 Financial ability of applicant.

No certificate of convenience and necessity shall be issued until the applicant has made a satisfactory showing as to the applicant's financial ability to carry out the terms and conditions imposed.

[C27, 31, 35, §5105-a8; C39, §5100.08; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.8]

Referred to in §327A.3

325.9 Conditions.

When the certificate is granted, the authority may attach to the exercise of the rights therein conferred such terms and conditions as in its judgment the public convenience and necessity may require, which shall include the right and duty to transport newspapers.

[C24, §5097; C27, 31, 35, §5105-a9; C39, §5100.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.9; 81 Acts, ch 22, §22]

Referred to in §327A.3

325.10 Amendment or revocation.

For just cause, the authority may at any time alter, amend, or revoke any certificate issued.

[C24, §5097; C27, 31, 35, §5105-a10; C39, §5100.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.10; 81 Acts, ch 22, §22]

Referred to in §327A.3

325.11 Rules of procedure.

The authority shall adopt rules governing the procedure to be followed in the filing of applications and in the conduct of hearings.

[C24, §5097; C27, 31, 35, §5105-a11; C39, §5100.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.11; 81 Acts, ch 22, §22]

Referred to in §327A.3

325.12 Application for certificate.

All applications shall be in writing and, in addition to the other information required, shall contain the following:

1. The name of the individual, firm, or corporation making the application.
2. The principal office or place of business of applicant.
3. A complete description of the route over which the applicant proposes to operate.
4. A schedule setting forth in detail the service which the applicant proposes to furnish.

5. A complete description of the equipment which the applicant proposes to use in furnishing the service.

6. A financial statement from which the board can determine whether or not the applicant is able to engage in the undertaking proposed in the application.

[C24, §5097; C27, 31, 35, §5105-a12; C39, §5100.12; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.12]

Referred to in §327A.3

325.13 Protests against applications.

1. Upon the filing of the application, the authority shall publish a notice to the citizens of each county in which the proposed service will be rendered. The notice shall be published once in a newspaper of general circulation in each county.

2. Any person, firm, corporation, city, or county whose rights or interests may be affected may file written objections with the authority.

3. A protest against the granting of the application shall state specifically the grounds upon which it is made and contain a concise statement of the interest of the person filing a protest in the proceeding.

4. A protest shall be filed with the authority not later than thirty days from the date of the publication of notice.

5. Upon receipt of any protests complying with subsection 3, the authority shall set the matter for hearing not less than ten days following the expiration of the time in which protests may be made and shall give notice to all persons who have filed protests of the time and place of the hearing.

[C24, §5097; C27, 31, 35, §5105-a13; C39, §5100.13; 5100.16; C46, 50, 54, 58, 62, 66, 71, 73, 75, §325.13-325.16; C77, 79, 81, §325.13; 81 Acts, ch 22, §22]

Referred to in §325.7, 327A.3

325.14 to 325.16 Repealed by 66GA, ch 1174, §15.

325.17 Testimony receivable.

The authority shall consider the application and any objections filed thereto and may hear testimony to aid it in determining the propriety of granting the application.

[C27, 31, 35, §5105-a17; C39, §5100.17; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.17; 81 Acts, ch 22, §22]

Referred to in § 327A.3

325.18 Granting application.

It may grant the application in whole or in part upon such terms, conditions, and restrictions and with such modifications as to schedule and route as may seem to it just and proper. The actual operation of such motor vehicles or vehicle shall not begin without a written statement of approval from the department to the effect that the safety provisions have been complied with.

[C24, §5097; C27, 31, 35, §5105-a18; C39, §5100.18; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.18]

Referred to in §325.7, 327A.3

325.19 Expense of hearing.

The applicant shall pay all the costs and expenses of the hearing and necessary preliminary investigation in connection therewith before the application shall be granted. The authority shall establish appropriate fees which shall be paid to the department at

the time the application is filed.

[C27, 31, 35, §5105-a19, -a20; C39, §5100.19, 5100.20; C46, 50, 54, 58, 62, 66, 71, 73, 75, §325.19, 325.20; C77, 79, 81, §325.19; 81 Acts, ch 22, §22]

Referred to in §327A.3

325.20 Repealed by 66GA, ch 1174, §15.

325.21 Judicial review.

Judicial review of the decisions and actions of the authority may be sought in accordance with the terms of the Iowa administrative procedure Act. Such petitioners must file with the clerk of the district court a bond for costs in the sum of not less than five hundred dollars.

[C24, §5098; C27, 31, 35, §5105-a21; C39, §5100.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.21; 81 Acts, ch 22, §22]

Referred to in §327A.3

Presumption of approval of bond, §682.10

325.22 to 325.24 Repealed by 65GA, ch 1090, §211.

325.25 Transfer of certificate.

A certificate of convenience and necessity shall not be sold, transferred, leased, or assigned, nor shall any contract or agreement with reference to or affecting any certificate be made without the written approval of the authority. The authority may hold a hearing at its discretion and shall approve the sale, transfer, lease, or assignment upon a finding that there has been continuous service under the certificate for at least ninety days prior to the transfer and that the transferee is fit, willing, and able to perform the operations authorized by the certificate and that the transfer is consistent with the public interest. Pending determination of an application filed with the authority for approval of a sale, transfer, lease, or assignment, the authority may grant temporary approval of the proposed operation upon a finding of good cause.

[C24, §5099; C27, 31, 35, §5105-a25; C39, §5100.25; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.25; 81 Acts, ch 22, §22]

325.26 Liability insurance and bond — proof of solvency.

No certificate shall be issued until and after the applicant shall have filed with the authority an insurance policy, policies, surety bond, or certificate of insurance, in form to be approved by the authority, issued by some company, association, reciprocal or interinsurance exchange or other insurer authorized to do business in this state. The minimum limits of liability of any policies or surety bond shall, for each motor vehicle thereby covered, be as follows:

1. Passenger motor carriers.

a. To cover the assured's legal liability as a motor carrier for bodily injury or death resulting therefrom as a result of any one accident or other cause, twenty-five thousand dollars for any recovery by one person and subject to said limit for one person one hundred fifty thousand dollars for more than one person.

b. To cover the assured's legal liability as a motor carrier for damage to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause, ten thousand dollars.

c. To cover the assured's legal liability as a motor carrier for loss of or damage to property of passengers as a result of any one accident or any other cause, one thousand dollars.

d. Any common carrier of passengers coming under the provisions of this chapter, furnishing satisfactory proofs to the authority of such carrier's solvency and financial ability to cover the assured's legal liability as provided for herein and make payments to such persons as may be entitled thereto as a result of such legal liability, or when such common carrier deposits with the authority, surety satisfactory to it as to guarantee for such payments, such common carrier will be relieved of the provisions of this section requiring liability insurance, surety bond or certificate of insurance; but such common carrier shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by the authority.

2. *Freight motor carriers.*

a. To cover the assured's legal liability as a motor carrier for bodily injury or death resulting therefrom, as a result of any one accident or other cause one hundred thousand dollars for any recovery by one person and subject to the limit for one person three hundred thousand dollars for more than one person. However, the minimum limits of liability for motor carriers of hazardous materials subject to federal minimum limits of liability are those specified in 49 C.F.R. sec. 387.3 and sec. 387.9 as published in the federal register on June 11, 1981.

b. To cover the assured's legal liability as a motor carrier for damage to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause ten thousand dollars. However, the minimum limits of liability for motor carriers of hazardous materials subject to federal minimum limits of liability are those specified in 49 C.F.R. sec. 387.3 and sec. 387.9 as published in the federal register on June 11, 1981.

c. To cover the assured's legal liability as a motor carrier for loss of or damage to property in the possession or custody of the assured while for the purpose of or being transported, except property of the assured as a result of any one accident or other cause ten thousand dollars. Such insurance policy, policies, surety bond, or certificate of insurance shall bind the obligors thereunder to make compensation for injuries to persons, excluding injury to or death of the applicant's employees while engaged in the course of their employment, and loss of or damage to property resulting from the operation of such motor carrier and for which such motor carrier would be legally liable. Such insurance policy, policies, surety bond, or certificate of insurance shall also provide that any person, firm, association or corporation having a right of action against such motor carrier for injuries to persons or loss of or damage to property, when service cannot be obtained on the motor carrier within this state, may bring action for recovery directly upon such insurance policy, policies, surety bond, or certificate of insurance and against such insurance company, association, reciprocal or interinsurance exchange or other insurer or bonding company. No other or additional policies, bonds, or certificates shall be required of any motor carrier by any city or other agency of the state.

[C24, §5103; C27, 31, 35, §5105-a26; C39, §5100.26;

C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.26; 81 Acts, ch 22, §22; 82 Acts, ch 1150, §2]

Referred to in §321A.33, 325.1(7), 325.6

Similar provision, §327.15

325.27 *Powers of cities.*

Cities may by ordinance adopt general rules of operation, and to designate the streets or routes over which motor carriers shall travel; provided, however, that the exercise of the power granted in this section shall be reasonable and fair.

[C24, §5101; C27, 31, 35, §5105-a28; C39, §5100.27; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.27]

325.28 *Safe and sanitary condition of vehicle.*

Every motor vehicle and all parts thereof shall be maintained in a safe and sanitary condition at all times, and shall be at all times, subject to inspection by the members of the department.

[C24, §5104; C27, 31, 35, §5105-a29; C39, §5100.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.28]

Referred to in §325.1(7), 325.6

325.29 *Driver of vehicle.*

Every driver employed by a motor carrier shall be at least eighteen years of age, in good physical condition, of good moral character, shall be fully competent to operate the motor vehicle, and shall hold a regular chauffeur's license.

[C24, §5104; C27, 31, 35, §5105-a30; C39, §5100.29; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.29; 82 Acts, ch 1150, §3]

Referred to in §325.1(7)

325.30 *Riding on outside part.*

On passenger-carrying motor vehicles passengers shall not be permitted to ride on the running boards, fenders, or on any other outside part of the vehicle.

[C24, §5104; C27, 31, 35, §5105-a31; C39, §5100.30; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.30]

325.31 *Distinctive markings on vehicle.*

There shall be attached to each motor vehicle distinctive markings or tags as prescribed by the authority.

[C24, §5104; C27, 31, 35, §5105-a36; C39, §5100.31; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.31; 82 Acts, ch 1100, §20]

Referred to in §325.1(7)

325.32 *Additional rules.*

The authority shall promulgate such other safety rules as it may deem necessary to govern and control the operation of motor vehicles upon the highways and the maintenance and inspection thereof.

[C24, §5104; C27, 31, 35, §5105-a37; C39, §5100.32; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.32; 81 Acts, ch 22, §22]

325.33 *Cancellation of certificate.*

For violation of any provision of this chapter or of any rule or regulation promulgated thereunder by any motor carrier, the authority may, in addition to other penalties herein provided, revoke and cancel the certificate of such motor carrier. In the event of any flagrant and persistent violation of safety regulations by the holder of a certificate or the holder's agent, upon the request of the department the authority shall sus-

pend such certificate of necessity until the safety regulations prescribed by the department are complied with or the authority may revoke the certificate at its discretion.

[C24, §5104; C27, 31, 35, §5105-a38; C39, §5100.33; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.33; 81 Acts, ch 22, §22]

325.34 Simple misdemeanor — penalty.

Every owner, officer, agent, or employee of any motor carrier, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, direction, demand, or requirement or any part or provision thereof, of the department, or who procures, aids, or abets any corporation or person in a failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or regulation or any part or provision thereof, shall be guilty of a simple misdemeanor.

[C24, §5105; C27, 31, 35, §5105-a39; C39, §5100.34; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §325.34]

Referred to in §805.8(2)(c)

325.35 Certificate conditioned on fee.

A motor vehicle engaged in the transportation of property under a certificate of convenience and necessity issued under the provisions of this chapter shall not be operated on the highways of this state unless there has been paid to the department for the administration of this chapter an annual fee of five dollars for each motor truck and ten dollars for each truck tractor or road tractor.

It shall be a simple misdemeanor for any motor carrier to operate any motor vehicle for which the annual fee has not been paid and the department may revoke the certificate of convenience and necessity of any such violator.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §325.35]

Referred to in §325.1(7), §325.6

325.36 Use of fees.

All moneys received under the provisions of this chapter shall be remitted to the treasurer of state and credited to the road use tax fund.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §325.36]

325.37 Safety equipment and regulations for all truck operators.

"Motor carrier" when used in this section and sections 325.38 and 325.39 means carriers holding a cer-

tificate under this chapter, truck operators and contract carriers holding permits under chapter 327, liquid transport carriers holding a certificate under chapter 327A, and private carriers. However, private carriers operating intrastate are not subject to federal drivers compliance and qualification requirements.

[C66, 71, 73, 75, 77, 79, 81, §325.37]

325.38 Additional requirements.

In addition to the requirements set forth in chapter 321, the department, in order to promote safety of operation, shall establish reasonable requirements prescribing standards of equipment for vehicles operated by motor carriers on the highways of this state pertaining to the following:

1. Lighting devices, reflectors, and electrical equipment.
2. Brakes.
3. Glazing and window construction.
4. Fuel systems.
5. Coupling devices and towing methods.
6. Emergency equipment.
7. The following miscellaneous parts and accessories:

- a. Tires.
- b. Heaters.
- c. Windshield wiper.
- d. Defrosting device.
- e. Rear vision mirrors.
- f. Horn.
- g. Speedometer.
- h. Exhaust system location.
- i. Floors.
- j. Protection against shifting cargo.
- k. Rear end protection.
- l. Flags on projecting loads.
- m. Television receivers.
- n. Buses, drive shaft protection.
- o. Buses, standee line or bar.
- p. Buses, aisle seats.
- q. Buses, marking emergency doors.

[C66, 71, 73, 75, 77, 79, 81, §325.38]

Referred to in §325.37

325.39 Violations.

It shall be unlawful for any person to operate any vehicle subject to the standards prescribed by the department on the highways of this state in violation of such standards.

[C66, 71, 73, 75, 77, 79, 81, §325.39]

Referred to in §325.37

identification to the applicant carrier and send the
of title to the vehicle owner or lienholder.
The department shall adopt rules pursuant to chapter
17A to provide for registration of motor vehicles in other
states.
[C76, §326.46]

§326.46 Temporary registration.

The department may issue temporary registration
upon application by the owner and pay-
ment of a fee of ten dollars for each vehicle. The regis-
tration shall be valid for fifteen days and for one trip
between specified points of origin and destination
with intermediate stops authorized by the depart-
ment. Property or persons shall not be transported
while the vehicle is subject to temporary registration.
[C81, §326.46]

CHAPTER 327

MOTOR VEHICLE TRUCK OPERATORS

Referred to in §307.18, 307.25, 325.37

- 327.1 Definitions.
- 327.2 Jurisdiction.
- 327.3 Rules.
- 327.4 Powers.
- 327.5 Charges.
- 327.6 Permit.
- 327.7 Application.
- 327.8 Issuance.
- 327.9 Fee.
- 327.10 Nonresidents — reciprocal waiver of fee.
- 327.11 Payment of fee.
- 327.12 Repealed by 64GA, ch 1079, §6.

- 327.13 Expenditure of funds.
- 327.14 Repealed by 81 Acts, ch 22, §24.
- 327.15 Insurance or bond.
- 327.16 Revocation of permit.
- 327.17 Equipment — inspection.
- 327.18 Drivers — conditions.
- 327.19 Required marking.
- 327.20 Rules for operation.
- 327.21 Violations — effect.
- 327.22 Violations — punishment.
- 327.23 Stone and road materials carriers.

327.1 Definitions.

When used in this chapter:

1. The term "motor truck" shall mean any automobile, automobile truck, or other self-propelled vehicle, including any trailer, semitrailer, or other device used in connection therewith, not operated upon fixed rails or track, used for the public transportation of freight for compensation, not operating between fixed termini, nor over a regular route, or used in connection with the transportation of property for compensation under an individual written contract.

2. The term "truck operator" shall mean any person operating any motor truck or motor trucks upon any highway in this state.

3. The term "highway" shall mean every street, road, bridge, or thoroughfare of any kind in this state.

4. "Authority" means the transportation regulation authority of the state department of transportation.

5. "Department" means the state department of transportation.

6. The term "contract carrier" shall mean any person who does not hold out to the general public to serve it indiscriminately and who, for compensation, engages in the business of transportation of property by motor truck under individual written contracts, thereby providing a special and individual service required by the peculiar needs of a particular shipper,

but does not include, (1) a motor carrier as defined in chapter 325, (2) a truck operator, or (3) a person whose transportation by motor vehicle is in furtherance of a private enterprise other than the business of transportation for others for compensation.

The term "individual written contract" shall mean an agreement in writing between a contract carrier and a shipper, effective for a duration of at least three months, imposing mutual obligations to tender freight and perform transportation, and specifying the charges. The authority shall authorize by rule the number of contracts which contract carriers may have in effect and on file at any one time. Special permission may be obtained from the authority to file more than the prescribed number of contracts upon good cause shown.

Provided, however, a self-propelled vehicle used exclusively for towing of disabled vehicles shall not be subject to subsections 1 and 3 of section 327.2 or rules made under said subsections, and shall not be required to carry cargo insurance.

[C31, 35, §5105-c1; C39, §5105.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.1; 81 Acts, ch 22, §22]

327.2 Jurisdiction.

The authority is hereby vested with power and authority and it shall be its duty to:

1. Fix or approve the rates, charges, classifications, and rules and regulations pertaining thereto, of each truck operator, after complaint has been filed.

2. Regulate and supervise the service of each truck operator, provided that only the department shall prescribe and enforce safety regulations which it is hereby empowered to do.

3. Require the filing of annual and such other reports as it may deem necessary, provided, however, that this subsection shall not apply to truck operators operating not more than two motor vehicles and who are not engaged in interstate commerce.

4. Supervise and regulate truck operators in all other matters affecting the relationship between such truck operators and the traveling and shipping public.

[C31, 35, §5105-c2; C39, §5105.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.2; 81 Acts, ch 22, §12, 22]

Referred to in §327.1

327.3 Rules.

The authority may by general or special order prescribe rules applicable to truck operators and contract carriers, provided that only the department shall prescribe and enforce safety regulations.

[C31, 35, §5105-c3; C39, §5105.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.3; 81 Acts, ch 22, §13]

327.4 Powers.

All control, power, and authority over railroads and railroad companies, motor vehicles and motor carriers now vested in the authority, insofar as the same are applicable, are hereby specifically extended to include truck operators and contract carriers. However, any truck operator transporting livestock or unprocessed agricultural or horticultural products shall be exempt from tariff filing requirements and the issuance of freight receipts for such commodities.

[C31, 35, §5105-c4; C39, §5105.04; C46, 50, 54, 58, 62, 66, §327.4; C71, 73, 75, 77, §325.2(1), 327.4; C79, 81, §327.4; 81 Acts, ch 22, §22]

327.5 Charges.

All charges made by any truck operator for any service rendered or to be rendered in the public transportation of property, or in connection therewith, shall be just, reasonable, and nondiscriminating, and every unjust, unreasonable, or discriminating charge for such service or any part thereof is prohibited and declared unlawful.

[C31, 35, §5105-c5; C39, §5105.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.5]

327.6 Permit.

It is hereby declared unlawful for any truck operator or contract carrier to operate or furnish public service within this state without first having obtained from the authority a permit as hereinafter defined. Providing, however, that any person, firm, or corporation whose truck operator or contract carrier permit has been revoked for a willful violation shall be required to pay a fee of one hundred dollars in addition to the other fees required by this section before such person, firm or corporation shall be granted a new permit. And providing, further, that any person, firm or corporation whose permit has been revoked shall not operate as a truck operator or contract carrier

until such person, firm, or corporation shall have applied for and received a new permit from the authority.

[C31, 35, §5105-c6; C39, §5105.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.6; 81 Acts, ch 22, §22]

327.7 Application.

Before a permit is issued, the person seeking the permit shall file an application with the department. All applications shall be in writing and contain the following:

1. The name of the individual, firm or corporation making the application.

2. The principal office or place of business of the applicant.

3. A general description of the territory in which the applicant proposes to operate and a general description of the service proposed to be rendered.

4. A complete description of the equipment which the applicant proposes to use in furnishing the service.

[C31, 35, §5105-c7; C39, §5105.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.7; 81 Acts, ch 22, §14]

327.8 Issuance.

Upon the filing of the application and if the applicant shall otherwise comply with the terms and conditions of this chapter, the authority shall issue to the applicant a permit as herein defined. The actual operation of such motor vehicle or vehicles shall not begin without the written approval of the state department, stating that the applicant has complied with the prescribed safety regulations.

[C31, 35, §5105-c8; C39, §5105.08; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.8; 81 Acts, ch 22, §22]

327.9 Fee.

A motor truck engaged in the transportation of property under a truck operator or contract carrier permit issued under the provisions of this chapter shall not be operated on the highways of this state unless there has been paid to the department for the administration of this chapter an annual fee of five dollars for each motor truck and ten dollars for each truck tractor or road tractor.

It is a simple misdemeanor for a truck operator or contract carrier to operate a motor truck for which the annual fee has not been paid and the department may revoke either the truck operator or contract carrier permit of any such violator or both.

[C31, 35, §5105-c9; C39, §5105.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.9]

Referred to in §327.10

327.10 Nonresidents — reciprocal waiver of fee.

The department established by law shall be empowered to waive the fee provided for in section 327.9, provided said motor truck is owned by a nonresident of this state and is operated upon the highways thereof only in the conduct of business in interstate commerce and provided further that the owner of said motor truck has complied with the registration requirements of the state of the owner's residence, and said department shall do all things necessary or required to negotiate and perfect reciprocal agreements between the various states and the state of Iowa, waiving the fee provided for in section 327.9 for the purpose of securing exemptions and privileges for citizens

of this state operating motor vehicles in other states.

[C39, §5105.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.10]

327.11 Payment of fee.

It shall be the duty of the authority to collect all permit fees provided in this chapter, and failure to pay any such permit fee within thirty days after the time the same shall become due shall be cause for revocation of the permit of the truck operator in arrears.

[C31, 35, §5105-c10; C39, §5105.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.11; 81 Acts, ch 22, §22]

327.12 Repealed by 64GA, ch 1079, §6.

327.13 Expenditure of funds.

All moneys received under the provisions of this chapter shall be remitted monthly to the treasurer of state and credited to the road use tax fund.

[C31, 35, §5105-c11, -c12; C39, §5105.12, 5105.13; C46, 50, 54, 58, 62, 66, 71, §327.12, 327.13; C73, 75, 77, 79, 81, §327.13]

327.14 Repealed by 81 Acts, ch 22, §24.

327.15 Insurance or bond.

No permit shall be issued until and after the applicant shall have filed with the authority an insurance policy, policies, surety bond or certificate of insurance in form to be approved by the authority issued by some insurance carrier or bonding company authorized to do business in this state. The minimum limits of liability of any policy, policies or surety bond shall, for each motor truck thereby covered, be as follows:

1. To cover the assured's legal liability as a truck operator or contract carrier for bodily injury or death resulting therefrom as a result of any one accident or other cause, one hundred thousand dollars for any recovery by one person, and subject to the limit for one person three hundred thousand dollars for more than one person. However, the minimum limits of liability for truck operators and contract carriers of hazardous materials subject to federal minimum limits of liability are those specified in 49 C.F.R. sec. 387.3 and sec. 387.9 as published in the federal register on June 11, 1981.

2. To cover the assured's legal liability as a truck operator or contract carrier for damage to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause, ten thousand dollars. However, the minimum limits of liability for truck operators and contract carriers of hazardous materials subject to federal minimum limits of liability are those specified in 49 C.F.R. sec. 387.3 and sec. 387.9 as published in the federal register on June 11, 1981.

3. To cover the assured's legal liability as a truck operator for loss of or damage to property in the possession or custody of the assured while for the purpose of or being transported, except property of the assured, as a result of any one accident or any other cause, two thousand dollars for each motor truck, except a combination of truck tractor and semitrailer for which such minimum limit shall be five thousand dollars.

Such insurance policy, policies or surety bond shall bind the obligors thereunder to make compensation for injuries to persons, excluding injury to or death of the applicant's employees while engaged in the course of their employment, and loss of or damage to property resulting from the operation of such motor truck and for which such truck operator would be legally liable. Such insurance policy, policies or surety bond shall also provide that any person, firm, association or corporation having a right of action against such truck operator for injuries to persons or loss of or damage to property, may bring action for recovery directly upon such insurance policy, policies or surety bond against such insurance carrier or bonding company when service cannot be obtained on the truck operator within this state. No other or additional policies or bond shall be required of any truck operator by any city or other agency in the state. Failure to keep such insurance in force at all times shall cause the permit of the truck operator to be revoked.

[C31, 35, §5105-c14; C39, §5105.15; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.15; 81 Acts, ch 22, §22; 82 Acts, ch 1150, §4]

Referred to in §321A.33, 327.23
Similar provision, §325.26

327.16 Revocation of permit.

For just cause, after due hearing, the authority may at any time alter, amend or revoke any permit issued. If the holder of the permit or the holder's agent persists in a violation of any safety regulation prescribed by the department, the latter may recommend to the authority revocation of said permit and such violation shall be grounds for such revocation.

[C31, 35, §5105-c15; C39, §5105.16; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.16; 81 Acts, ch 22, §22]

327.17 Equipment — inspection.

Every motor truck and all parts thereof shall be maintained in a safe and sanitary condition at all times, and shall be at all times subject to inspection by the department.

[C31, 35, §5105-c16; C39, §5105.17; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.17]

327.18 Drivers — conditions.

Every person driving a motor truck shall be at least eighteen years of age, in good physical condition, of good moral character, shall be fully competent to operate the motor truck and shall hold a regular chauffeur's license.

[C31, 35, §5105-c17; C39, §5105.18; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.18; 82 Acts, ch 1150, §5]

327.19 Required marking.

There shall be attached to each motor truck such distinctive markings or tags as shall be prescribed by the authority.

[C31, 35, §5105-c22; C39, §5105.19; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.19; 81 Acts, ch 22, §22]

327.20 Rules for operation.

The department shall promulgate such other safety rules as it may deem necessary to govern and control

the operation of motor trucks upon the highways and the maintenance and inspection thereof.

[C31, 35, §5105-c23; C39, §5105.20; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.20]

327.21 Violations — effect.

For violation by any truck operator of any provision of this chapter or of any rule promulgated thereunder, the authority may, in addition to other penalties here-in provided, suspend or revoke and cancel the permit of such truck operator.

[C31, 35, §5105-c24; C39, §5105.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.21; 81 Acts, ch 22, §22]

327.22 Violations — punishment.

Every owner, officer, agent, or employee of any truck operator, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, direction, demand, or requirement or any part or provision thereof, of the commission, or the department, or who procures, aids, or abets any corporation or person in a failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or regulation or any part or provision thereof, shall be guilty of a simple misdemeanor.

[C31, 35, §5105-c25; C39, §5105.22; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.22]

Referred to in §805.8(2)(c)

327.23 Stone and road materials carriers.

Any person, firm, or corporation may obtain a permit to engage as a contract carrier in this state in the transportation of agricultural limestone, aggregates such as sand, gravel, crushed or broken stone, and all other materials for road or bridge construction or reconstruction projects, by filing with the authority an application therefor. No proof of need for service, nor public convenience or necessity shall be required of such applicant; there shall be no limitation on the number of individual contracts, oral or written, permitted and no tariff or schedule of rates or charges shall be required. The authority shall issue such permit when the applicant has paid all fees required by this chapter, and complied with the provisions of section 327.15 relating to insurance protection. The holder of such permit shall in all cases comply with the safety rules provided for by this chapter and shall pay all annual permit fees required of other contract carriers and such permits shall, after due hearing, be subject to revocation for violation thereof.

[C31, 35, §5105-c1; C39, §5105.01; C46, 50, 54, §327.1; C58, 62, 66, 71, 73, 75, 77, 79, 81, §327.23; 81 Acts, ch 22, §22]

CHAPTER 327A

LIQUID TRANSPORT CARRIERS

Referred to in §307.18, 307.25, 325.37

- 327A.1 Definitions of words and phrases.
- 327A.2 Certificate required.
- 327A.3 Applicable sections of law.
- 327A.4 Disposal of certificate.
- 327A.5 Insurance required.
- 327A.6 All motor vehicle law applicable.
- 327A.7 Drivers requirements.
- 327A.8 Markings on vehicles.
- 327A.9 Cancellation or suspension.
- 327A.10 Hours of operation.
- 327A.11 Rest period.

- 327A.12 Records kept.
- 327A.13 Disabled vehicles.
- 327A.14 Prior service — rights transferred or assigned.
- 327A.15 Vehicles excepted.
- 327A.16 Dairy products exempt.
- 327A.17 Rules.
- 327A.18 Penalty.
- 327A.19 Fee for operation.
- 327A.20 Railroad control extended.
- 327A.21 Charges must be reasonable.

327A.1 Definitions of words and phrases.

The following words and phrases, when used in this chapter, will for the purpose of this chapter, have the following meanings respectively ascribed to them:

1. "Liquid transport carrier" shall mean any person engaged in the transportation, for compensation, of liquid products in bulk upon any highway in this state.

2. "Person" shall mean any individual, association, partnership, firm or corporation.

3. "Vehicle" shall mean any self-propelled vehicle, any trailer, semitrailer, or other device used in connection therewith not operated upon fixed rails or tracks, equipped with one or more cargo tanks, or between fixed termini or over a regular route and used for the transportation of liquid products in bulk.

4. "Transportation for compensation" shall, in addition to all public transportation, also include transportation primarily for others by a person, not a distributor licensed under chapter 324, even though as

§327.20, MOTOR VEHICLE TRUCK OPERATORS

the operation of motor trucks upon the highways and the maintenance and inspection thereof.

[C31, 35, §5105-c23; C39, §5105.20; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.20]

327.21 Violations — effect.

For violation by any operator of any provision of this chapter or of any rule promulgated thereunder, the authority may, in addition to other penalties herein provided, suspend or revoke and annul the permit of such truck operator.

[C31, 35, §5105-c24; C39, §5105.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.21; 81 Acts, ch 22, §22]

327.22 Violations — punishment.

Every owner, officer, agent, or employee of a truck operator, and every other person who aids or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, demand, or requirement or any part or provision thereof, of the commission, or the department, or who procures, aids, or abets any other person in a failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or regulation or any part or provision thereof, shall be guilty of a simple misdemeanor.

[C31, 35, §5105-c25; C39, §5105.22; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §327.22]

Referred to in §805.8(2)(a)

327.23 Stone and road materials carriers.

Any person, firm, or corporation may obtain a permit to engage as a contract carrier in this state the transportation of agricultural limestone, aggregates such as sand, gravel, crushed or broken stone, and all other materials for road or bridge construction or reconstruction projects, by applying with the authority an application therefor. No proof of need for service, nor public convenience or necessity shall be required of such applicant. There shall be no limitation on the number of individual contracts, oral or written, permissive and no tariff or schedule of rates or charges shall be required. The authority shall issue such permit when the applicant has paid all fees required by this chapter, and complied with the provisions of section 327.15 relating to insurance protection. The holder of such permit shall in all cases comply with the safety rules promulgated for by this chapter and shall pay all annual permit fees required of other contract carriers and such permits shall, after due hearing, be subject to revocation for violation thereof.

[C31, 35, §5105-c1; C39, §5105.21; C46, 50, 54, §327.1; C58, 62, 66, 71, 73, 75, 77, 79, 81, §327.23; 81 Acts, ch 22, §22]

CHAPTER 327A**LIQUID TRANSPORT CARRIERS**

Referred to in §307.18, 307.25, 325.37

- 327A.1 Definitions of words and phrases.
- 327A.2 Certificate required.
- 327A.3 Applicable sections of law.
- 327A.4 Disposal of certificate.
- 327A.5 Insurance required.
- 327A.6 All motor vehicle law applicable.
- 327A.7 Drivers requirements.
- 327A.8 Markings on vehicles.
- 327A.9 Cancellation or suspension.
- 327A.10 Hours of operation.
- 327A.11 Rest period.

- 327A.12 Records kept.
- 327A.13 Disabled vehicles.
- 327A.14 Prior service — rights transferred or assigned.
- 327A.15 Vehicles excepted.
- 327A.16 Dairy products exempt.
- 327A.17 Rules.
- 327A.18 Penalty.
- 327A.19 Fee for operation.
- 327A.20 Railroad control extended.
- 327A.21 Charges must be reasonable.

327A.1 Definitions of words and phrases.

The following words and phrases, when used in this chapter, will for the purpose of this chapter, have the following meanings respectively ascribed to them:

1. "Liquid transport carrier" shall mean any person engaged in the transportation, for compensation, of liquid products in bulk upon any highway in this state.
2. "Person" shall mean any individual, association, partnership, firm or corporation.

3. "Vehicle" shall mean any self-propelled vehicle, any trailer, semitrailer, or other device used in connection therewith not operated upon fixed rails or tracks, equipped with one or more cargo tanks, or between fixed termini or over a regular route and used for the transportation of liquid products in bulk.

4. "Transportation for compensation" shall, in addition to all public transportation, also include transportation primarily for others by a person, not a distributor licensed under chapter 324, even though as

an incident thereto the person buys the liquids at the point where the transportation originates and sells it at a delivered price at destination and, except as otherwise provided, shall include transportation for others by a distributor licensed under chapter 324 or liquid products not owned by the distributor.

5. "Authority" means the transportation regulation authority of the state department of transportation.

6. "Department" means the state department of transportation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.1; 81 Acts, ch 22, §22]

Referred to in §327A.16

327A.2 Certificate required.

Except as otherwise provided, it is hereby declared unlawful for any liquid transport carrier to transport liquid products in bulk, for compensation from any point or place in the state of Iowa to another point or place in said state without first having obtained from the authority a certificate declaring that public convenience and necessity require such operation.

The authority may allow the provision of temporary service for which there is an immediate and urgent need to point or points requested by the application for a certificate of public convenience and necessity upon consideration by the authority and a finding that the point or points do not have liquid bulk carrier service capable of meeting such need or that a carrier is not currently serving those points. Upon meeting the requirements of this chapter and the rules of the authority, such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the authority shall specify but not to exceed one hundred twenty days. Granting temporary authority shall not create a presumption that the corresponding application will subsequently be granted.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.2; 81 Acts, ch 22, §22]

Referred to in §327A.15

327A.3 Applicable sections of law.

The provisions of sections 325.7 to 325.21 insofar as applicable are hereby extended to include liquid transport carriers in relation to hearing on an application for the aforesaid certificate of convenience and necessity.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.3]

Referred to in §327A.15

327A.4 Disposal of certificate.

Whenever any person shall file with the authority an application for authority to sell, transfer, lease or assign a certificate of convenience and necessity issued under the provisions of this chapter, the authority shall fix a date for hearing thereon and cause a notice addressed to the citizens of each county through or in which the proposed service will be rendered to be published in some newspaper of general circulation in each such county, once each week for two consecutive weeks, and shall notify each liquid transport carrier holding a certificate, issued by the authority, to transport over, in, or through the area described in the application, by mailing notice of the hearing to each such carrier at least ten days before the date fixed for hearing, and the provisions of chap-

ter 325, inclusive of this chapter shall, insofar as appropriate be applicable to the said hearing.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.4; 81 Acts, ch 22, §22]

Referred to in §327A.14, 327A.15

327A.5 Insurance required.

No certificate shall be issued until and after an applicant shall have filed with the authority an insurance policy, policies, surety bond or certificate of insurance, in form to be approved by the authority, issued by some company, association, reciprocal or interinsurance exchange or other insurer authorized to do business in this state.

The minimum limit of liability of any policy or surety bond shall, for each vehicle thereby covered, be as follows:

1. To cover the assured's legal liability as a liquid transport carrier for bodily injury or death resulting therefrom as a result of any one accident or other cause, one hundred thousand dollars for any recovery by one person, and subject to the limit for one person, three hundred thousand dollars, for more than one person. However, the minimum limits of liability for liquid transport carriers of hazardous materials subject to federal minimum limits of liability are those specified in 49 C.F.R. sec. 387.3 and sec. 387.9 as published in the federal register on June 11, 1981.

2. To cover the assured's legal liability as a liquid transport carrier for damages to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause one hundred thousand dollars. However, the minimum limits of liability for liquid transport carriers of hazardous materials subject to federal minimum limits of liability are those specified in 49 C.F.R. sec. 387.3 and sec. 387.9 as published in the federal register on June 11, 1981.

3. To cover the assured's legal liability as a liquid transport carrier for loss of or damage to property in the possession or custody of the assured while for the purpose of or being transported, except property of the assured as a result of any one accident or other cause ten thousand dollars. Such insurance policy, policies, surety bond, or certificate of insurance shall bind the obligors thereunder to make compensation for injuries to persons, excluding injury to or death of the applicant's employees while engaged in the course of their employment and loss to or damage to property resulting from the operation of such liquid transport carrier and for which such liquid transport carrier would be legally liable. Such insurance policy, policies, surety bond, or certificate of insurance shall also provide that any person, firm, association or corporation having a right of action against such liquid transport carrier for injuries to persons or loss of or damage to property, when service cannot be obtained on the liquid transport carrier within this state, may bring action for recovery directly upon such insurance policy, policies, surety bond, or certificate of insurance and against such insurance company, association, reciprocal or interinsurance exchange or other insurer or bonding company. Except as required in this chapter and in chapter 325 and except for ordinary registration of motor vehicles, no other or additional policies, bonds or certificates shall be required by any city or other agency of this state for any liquid transport

vehicle.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.5; 81 Acts, ch 22, §22; 82 Acts, ch 1150, §6]

Referred to in §321A.33, 327A.15

327A.6 All motor vehicle law applicable.

Every vehicle operated by a liquid transport carrier and all parts thereof shall comply with all of the provisions of chapter 321 applicable thereto and shall be maintained in a safe and sanitary condition at all times, and shall be at all times subject to inspection by the members of the department.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.6]

Referred to in §327A.15

327A.7 Drivers requirements.

Every driver employed by a liquid transport carrier shall be at least eighteen years of age, in good physical condition, of good moral character, shall be fully competent to operate the vehicle, and shall hold a regular chauffeur's license.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.7; 82 Acts, ch 1150, §7]

Referred to in §327A.15

327A.8 Markings on vehicles.

There shall be attached to each tank vehicle used for the intrastate transportation of liquid, distinctive markings or tags as prescribed by the authority.

There shall be attached to each tank vehicle used for the intrastate transportation of any flammable liquid distinctive markings or tags on each side and rear in letters a minimum of four inches high and a minimum width of five-eighths of an inch.

Intrastate tank vehicles transporting flammable liquids pursuant to the provisions of this section shall utilize the following options:

1. A sign or lettering with the word "FLAMMABLE".
2. The common name of the flammable liquid being transported.
3. The name or trademark of the carrier when the name or trademark plainly indicates the flammable nature of the cargo.

Vehicles in conformity with the federal department of transportation rules pertaining to the transportation of flammable liquids shall be deemed to be in compliance with the provisions of this section.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.8; 82 Acts, ch 1100, §21]

Referred to in §327A.15

327A.9 Cancellation or suspension.

For violation of any of the provisions of this chapter or of any rule or regulation promulgated hereunder by any liquid transport carrier, the authority may revoke and cancel the certificate of such liquid transport carrier. In the event of any flagrant and persistent violation of safety laws or regulations by the holder of a certificate or the holder's agent, upon the request of the department, the authority shall suspend such certificate of necessity until the safety laws or regulations prescribed by the department are complied with or the authority may revoke the certificate at its discretion.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.9; 81 Acts, ch 22, §22]

Referred to in §327A.15

327A.10 Hours of operation.

No person shall operate a vehicle on the highways of this state when operation of such vehicle would result in more than twelve hours of continuous driving operation by such person.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.10]

Referred to in §327A.15

327A.11 Rest period.

No person shall operate a vehicle on the highways of this state for a period of eight hours following twelve consecutive driving hours of operation of any vehicle.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.11]

Referred to in §327A.15

327A.12 Records kept.

Every liquid transport carrier shall keep or cause to be kept a record accurately setting forth the hours of vehicle operation of each person operating a vehicle or vehicles owned or leased by such carrier. The department or the authority may require any liquid transport carrier to submit such records for inspection.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.12; 81 Acts, ch 22, §22]

Referred to in §327A.15

327A.13 Disabled vehicles.

All vehicles or combination of vehicles shall be equipped with direction signal devices of a type complying with the provisions of section 321.317 relating to such devices and whenever, during hours of darkness, any vehicle is disabled or for any other reason may present a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing the operator of such vehicle shall display such directional signals on such vehicle or combination of vehicles in simultaneous operation. The provisions of this section shall not be construed to be in lieu of the provisions of sections 321.447 and 321.448 and the provisions of the said sections shall be fully applicable as provided therein.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.13]

Referred to in §327A.15

327A.14 Prior service — rights transferred or assigned.

Any liquid transport carrier actively and continuously engaged in business as such between the first day of December, 1956, and the fourteenth day of January, 1957, shall be issued a certificate of convenience and necessity covering all points in this state to all other points in this state, and all routes and areas in this state, provided that application therefor shall be made within sixty days after May 17, 1957. No rights so granted may be sold, leased, transferred or assigned to any person engaged directly or indirectly in the transportation for hire of liquid products in bulk or freight in interstate commerce or in intrastate commerce, in this or any other state, or the District of Columbia, or to any person engaged in the leasing of equipment for such purposes, except such rights as are actively being exercised at the time of sale, lease, transfer or assignment; provided, however, rights so granted may be sold, leased, transferred or assigned to any person who has not engaged directly or indirectly in the transportation for hire of liquid products in

bulk or freight in interstate or intrastate commerce prior to the date of such transfer, or to any person who has not prior to such date engaged in the leasing of equipment for such purpose, and on hearing it shall not be necessary for the authority to find that such sale, lease, transfer or assignment is necessary in the public interest. Before any rights may be sold, leased, transferred or assigned, application therefor shall be filed with the authority, which shall fix a date for hearing thereon, and the provisions of section 327A.4 shall be applicable thereto. Rights actively being exercised may be sold, leased, transferred or assigned to any person engaged in the transportation for hire of liquid products in bulk or freight under the conditions hereinafter set forth:

1. Whenever an application for a sale, lease, transfer, assignment, consolidation, merger, or acquisition of control is filed with the authority, if on hearing the authority finds that (a) the proposed purchaser, lessee, transferee or assignee is fit, willing and able, and (b) that the proposed seller, lessor, transferor or assignor has not abandoned, suspended or discontinued operations, and (c) that the transaction proposed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such sale, lease, transfer, assignment, consolidation, merger or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe.

2. Except as otherwise provided in subsection 1, it shall be unlawful for any person to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more persons engaged in the transportation for hire of liquid products in bulk or freight or of one or more persons so engaged, however such result is attained, whether directly or indirectly, by use of common directors, officers or stockholders, holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever.

3. The authority is hereby authorized, upon complaint, or upon its own initiative without complaint, but after notice, and hearing, to investigate and determine whether any person is violating the provisions of this section. If the authority finds upon investigation that any person is violating the provisions of this section, it shall, by order, require such person to take such action consistent with the provisions of this chapter as may be necessary, in the opinion of the authority, to prevent continued violation of such provisions.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.14; 81 Acts, ch 22, §22]

Referred to in §327A.15

327A.15 Vehicles excepted.

Sections 327A.1 to 327A.14 shall not apply to (1) transportation in bulk by vehicle having a total cargo tank shell capacity of two thousand gallons or less, (2) transportation by a distributor licensed under chapter 324 incidental to and in the regular course of the business as a distributor of petroleum products, or (3) reciprocal exchange between distributors licensed under chapter 324 of transportation pursuant to an exchange of products between distributors so licensed.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.15]

327A.16 Dairy products exempt.

The provisions of this chapter shall not apply to the transportation of dairy products.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §327A.16]

327A.17 Rules.

The authority may by general order or otherwise prescribe rules applicable to liquid transport carriers. The state department may prescribe and enforce safety rules in the operation of liquid transport carriers and require a periodic inspection of the equipment of every liquid transport carrier from the standpoint of enforcement of safety rules, and the equipment shall be at all times subject to inspection by properly authorized representatives of the department.

[C62, 66, 71, 73, 75, 77, 79, 81, §327A.17; 81 Acts, ch 22, §15]

327A.18 Penalty.

Every owner, officer, agent or employee of any liquid transport carrier, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement or any part or provision thereof of the authority, or who procures, aids or abets any corporation or person in a failure to obey, observe, or comply with any such order, decision, rule, direction, demand or regulation or any part or provision thereof, shall be guilty of a simple misdemeanor.

[C62, 66, 71, 73, 75, 77, 79, 81, §327A.18; 81 Acts, ch 22, §22]

327A.19 Fee for operation.

A certificate of convenience and necessity shall not be issued nor continued in force until the holder has paid to the authority an annual certificate fee for each motor vehicle operated under the certificate in the amount of five dollars, except that the fee for a tractor or truck tractor is fifteen dollars, and except that the fee shall not be imposed on a trailer or semitrailer. Fees collected pursuant to this section shall be remitted to the treasurer of state and credited to the road use tax fund.

[C62, 66, 71, 73, 75, 77, 79, 81, §327A.19]
84 Acts, ch 1219, §29

327A.20 Railroad control extended.

All control, power and authority over railroads and railroad companies now vested in the authority, insofar as the same is applicable, are hereby specifically extended to include liquid transport carriers.

[C62, 66, 71, 73, 75, 77, 79, 81, §327A.20; 81 Acts, ch 22, §22]

327A.21 Charges must be reasonable.

All charges made by any liquid transport carrier for any service rendered or to be rendered in the transfer of liquid products in bulk upon any highway, or in connection therewith, shall be just, reasonable and nondiscriminating, and every unjust, unreasonable or discriminating charge for such service or any part thereof is prohibited and declared unlawful.

[C62, 66, 71, 73, 75, 77, 79, 81, §327A.21]

CHAPTER 327B

INTERSTATE COMMERCE COMMISSION AUTHORITY OF MOTOR CARRIERS

Referred to in §307.25

327B.1 Authority secured and registered.
 327B.2 Enforcement.
 327B.3 Fees — use.

327B.4 Private carriers exempt.
 327B.5 Penalty.
 327B.6 Insurance or bond.

327B.1 Authority secured and registered.

It is unlawful for a carrier to perform an interstate transportation service for compensation upon the highways of this state without first registering the authority obtained from the interstate commerce commission or evidence that such authority is not required with the state department of transportation.

Registration shall be granted without hearing upon application and payment of a twenty-five-dollar filing fee. Each amendment of supplemental authority shall require a ten-dollar filing fee.

Upon registration, the state department of transportation shall identify the registration by number and issue annually a decal or sticker bearing the registration number of the carrier for each motor truck, truck tractor or road tractor operating in this state for a one-dollar fee per vehicle.

The state department of transportation may execute reciprocity agreements with authorized representatives of any state exempting nonresidents from payment of fees as set forth in this chapter. The state department of transportation shall adopt rules pursuant to chapter 17A for the identification of vehicles operated under reciprocity agreements.

Fees may be subject to reduction or proration pursuant to sections 326.5 and 326.32.

[C66, 71, 73, 75, 77, 79, 81, §327B.1]

Referred to in §327B.6, 805.8(2)(a)

327B.2 Enforcement.

The state department of transportation may designate by resolution certain of its employees upon each of whom there is hereby conferred the authority of a peace officer to make arrests for violations of laws relating to the registration of a motor carrier's interstate transportation service with the state department of transportation.

[C66, 71, 73, 75, 77, 79, 81, §327B.2]

327B.3 Fees — use.

All fees paid under the provisions of this chapter shall be remitted to the treasurer of state and credited to the road use tax fund.

[C66, 71, 73, 75, 77, 79, 81, §327B.3]

327B.4 Private carriers exempt.

The provisions of this chapter shall not be construed to include private carriers.

[C66, 71, 73, 75, 77, 79, 81, §327B.4]

327B.5 Penalty.

Any person violating the provisions of this chapter shall, upon conviction, be subject to a fine of not more than one hundred dollars or imprisonment in the county jail for not more than thirty days.

[C77, 79, 81, §327B.5]

327B.6 Insurance or bond.

Registration under section 327B.1 shall not be granted until the carrier has filed with the state department of transportation evidence of insurance or surety bond issued by an insurance carrier or bonding company authorized to do business in this state and in the form prescribed by the rules adopted under 49 U.S.C. 302(b) (2) (1965). The minimum limits of liability for each interstate motor carrier for hire subject to federal minimum limits of liability are those specified in 49 C.F.R. sec. 387.3 and sec. 387.9 as published in the federal register on June 11, 1981 for motor carriers of property and 49 C.F.R. sec. 1043.5 as published in the federal register on June 11, 1981 for motor carriers of passengers.

The insurance policy or surety bond shall bind the insurance company or bonding company to make compensation to claimants for the carrier's liability. The insurance policy or surety bond shall also provide that a person having a cause of action against the carrier may bring action directly upon the policy or bond when service cannot be obtained on the interstate carrier within this state.

Failure to keep insurance or bond in effect at all times shall cause the registration of the interstate carrier to be revoked.

[C81, §327B.6; 82 Acts, ch 1150, §8, 9]

Referred to in §321A.33

DEPARTMENT OF WATER, AIR AND WASTE MANAGEMENT, Ch 455B

CHAPTER 455B

DEPARTMENT OF WATER, AIR AND WASTE MANAGEMENT

Referred to in §101.10, 111.62, 172D.3, 206.19, 258A.1, 306.27, 331.428

Sections 455B.1 to 455B.150, Code 1981, renumbered as §455B.101 to 455B.471 in Code 1983

DIVISION I
ADMINISTRATION

- 455B.101 Definitions.
- 455B.102 Department created.
- 455B.103 Executive director's duties.
- 455B.104 Water, air and waste management commission.
- 455B.105 Powers and duties of the commission.
- 455B.106 Appeal board.
- 455B.107 Warrants by comptroller.
- 455B.108 Office facilities.
- 455B.109 Schedule of fines — minor violations.
- 455B.110 to 455B.130 Reserved.

DIVISION II
AIR QUALITY

- 455B.131 Definitions.
- 455B.132 Executive agency.
- 455B.133 Duties.
- 455B.134 Executive director — duties — limitations.
- 455B.135 Limit on authority.
- 455B.136 Assistance on demand.
- 455B.137 Privileged information.
- 455B.138 Resolution of violations — appeal.
- 455B.139 Emergency orders.
- 455B.140 Judicial review.
- 455B.141 Legal action.
- 455B.142 Burden of proof.
- 455B.143 Variance.
- 455B.144 Local control program.
- 455B.145 Acceptance of local program.
- 455B.146 Civil action for compliance.
- 455B.147 Failure — procedure.
- 455B.148 Fees. Repealed by 83 Acts, ch 136, §8.
- 455B.149 Energy or economic emergency.
- 455B.150 to 455B.170 Reserved.

DIVISION III
WATER QUALITYPART 1
GENERAL

- 455B.171 Definitions.
- 455B.172 Jurisdiction of department and local boards.
- 455B.173 Duties.
- 455B.174 Executive director's duties.
- 455B.175 Violations.
- 455B.176 Criteria considered.
- 455B.177 Declaration of policy.
- 455B.178 Judicial review.
- 455B.179 Trade secrets protected.
- 455B.180 Stay order.
- 455B.181 Variances and exemptions.
- 455B.182 Failure constitutes contempt.
- 455B.183 Written permits required.
- 455B.184 Disposal system plans.
- 455B.185 Data from departments.

- 455B.186 Prohibited discharges.
- 455B.187 Penalties — burden of proof.
- 455B.188 to 455B.210 Reserved.

PART 2
WATER TREATMENT

- 455B.211 Definitions.
- 455B.212 Executive director's duties.
- 455B.213 Certification of persons.
- 455B.214 Board.
- 455B.215 Organization — compensation and expenses.
- 455B.216 Examination.
- 455B.217 Certificate issued.
- 455B.218 Duration.
- 455B.219 Revocation or suspension.
- 455B.220 Certificate without examination.
- 455B.221 Fee.
- 455B.222 Rules.
- 455B.223 Competent operator required.
- 455B.224 Simple misdemeanor.
- 455B.225 to 455B.240 Reserved.

PART 3
SEWAGE WORKS CONSTRUCTION

- 455B.241 Fund.
- 455B.242 Grants of assistance.
- 455B.243 Acceptance of grants.
- 455B.244 Contracts.
- 455B.245 Rules.
- 455B.246 Review of contracts by attorney general.
- 455B.247 to 455B.260 Reserved.

PART 4
WATER ALLOCATION AND USE,
FLOOD PLAIN CONTROL

- 455B.261 Definitions.
- 455B.262 Declaration of policy and planning requirements.
- 455B.263 Duties.
- 455B.264 Jurisdiction — water and flood plains.
- 455B.265 Permits for diversion, storage, and withdrawal.
- 455B.266 Priority of permits for diversion, storage, and withdrawal.
- 455B.267 Permits for beneficial use — prohibitions.
- 455B.268 When permit required.
- 455B.269 Taking water prohibited.
- 455B.270 Rights reserved.
- 455B.271 Modification or cancellation of permits.
- 455B.272 Termination of permit.
- 455B.273 Disposal of permit.
- 455B.274 Unauthorized depleting uses.
- 455B.275 Prohibited acts — powers of commission and executive director.
- 455B.276 Flood plains — encroachment limits.

455B.277 Flood control works coordinated.
 455B.278 Permit application procedures.
 455B.279 Violation.
 455B.280 Coordination with conservancy districts.
 455B.281 to 455B.300 Reserved.

DIVISION IV
 SOLID WASTE DISPOSAL

PART 1
 SOLID WASTE

455B.301 Definitions.
 455B.302 Duty of cities and counties.
 455B.303 Administrator's duties.
 455B.304 Rules established.
 455B.305 Certification of plans by director.
 455B.306 Plans filed.
 455B.307 Dumping -- where prohibited.
 455B.308 Appeal from order.
 455B.309 to 455B.330 Reserved.

PART 2
 RADIOACTIVE WASTE

455B.331 Definitions.
 455B.332 Policy.
 455B.333 Rules for transporting.
 455B.334 Waste disposal site.
 455B.335 Executive director's duties.
 455B.336 Notice to violators.
 455B.337 Emergency action.
 455B.338 Judicial review.
 455B.339 Injunction.
 455B.340 Penalty.
 455B.341 to 455B.360 Reserved.

PART 3
 DEBRIS

455B.361 Definitions.
 455B.362 Executive director's duties.
 455B.363 Litter.
 455B.364 Penalty.
 455B.365 to 455B.380 Reserved.

PART 4
 HAZARDOUS CONDITIONS

455B.381 Definitions.
 455B.382 Administrative agency.
 455B.383 Powers and duties of commission.
 455B.384 Powers and duties of the executive director.
 455B.385 State hazardous condition contingency plan.
 455B.386 Notification of spills -- penalty.
 455B.387 Removal of hazardous substances.
 455B.388 Injunctions and emergency orders.
 455B.389 Judicial review.
 455B.390 Jurisdiction limited.
 455B.391 Duties of attorney general.
 455B.392 Liability for cleanup costs.

455B.393 Liability of state employees or persons providing assistance.
 455B.394 Right of entry.
 455B.395 Public information.
 455B.396 to 455B.398 Reserved.
 455B.399 Cleanup assistance-liability.
 455B.400 to 455B.410 Reserved.

PART 5
 HAZARDOUS WASTE MANAGEMENT

455B.411 Definitions.
 455B.412 Duties of the commission.
 455B.413 Executive director's duties.
 455B.414 Hazardous waste notification.
 455B.415 Permit required.
 455B.416 Inspections.
 455B.417 Prohibited acts -- penalties.
 455B.418 Enforcement.
 455B.419 Agricultural chemicals.
 455B.420 Rules.
 455B.421 Judicial review.
 455B.422 Acquisition and lease of sites.
 455B.423 Hazardous waste remedial fund.
 455B.424 Hazardous waste fees.
 455B.425 Annual report on hazardous waste remedial fund.
 455B.426 Registry of abandoned or uncontrolled disposal sites.
 455B.427 Annual report on abandoned or uncontrolled hazardous waste disposal sites.
 455B.428 Investigation of sites.
 455B.429 Notification to owners -- appeals.
 455B.430 Use and transfer of sites -- penalty.
 455B.431 Recording of site designation.
 455B.432 Liability.
 455B.433 to 455B.440 Reserved.

PART 6
 HAZARDOUS WASTE MANAGEMENT METHODS

455B.441 Purpose and guidelines.
 455B.442 Definitions.
 455B.443 License required.
 455B.444 Temporary members appointed.
 455B.445 Notification requirements.
 455B.446 Proceeding.
 455B.447 Proceeding -- role of regulatory agencies.
 455B.448 Decision by commission.
 455B.449 Issuance of license -- effect.
 455B.450 Cost of proceedings.
 455B.451 Further approvals prohibited -- exception.
 455B.452 Single hearing -- judicial review.
 455B.453 Rules.
 455B.454 Penalties.
 455B.455 Surcharge imposed.
 455B.456 to 455B.470 Reserved.

DIVISION V
 CHEMICAL TECHNOLOGY

455B.471 Restrictions on use of agricultural chemicals.

DIVISION I
ADMINISTRATION

Sections 455B.1 to 455B.9, Code 1981, renumbered as §455B.101 to
455B.108 in Code 1983

455B.101 Definitions.

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

1. *"Department"* means the department of water, air and waste management.
2. *"Executive director"* means the executive director of the department of water, air and waste management or a designee of the executive director.
3. *"Commission"* means the water, air and waste management commission.
[C66, §455B.2(10); C71, §136B.2(6), 455B.2(10), 455C.1(2); C73, 75, 77, §455B.1, 455B.10(6), 455B.30(11), 455B.50(2), 455B.67(2), 455B.75(5), 455B.85(4), 455B.95(3); C79, §455B.1, 455B.10(6), 455B.30(11), 455B.50(2), 455B.67(2), 455B.75(5), 455B.85(4), 455B.95(3), 455B.110(7); C81, §455B.1; 82 Acts, ch 1199, §1, 96]

455B.102 Department created.

There is created a department of water, air and waste management. The chief administrative officer of the department is the executive director who shall be appointed by the governor, subject to confirmation by the senate, and serve at the governor's pleasure.

The executive director shall be selected on the basis of his administrative abilities. The salary of the executive director shall be initially established by the governor, but it shall not exceed twenty-five thousand dollars per annum and, thereafter, it shall be determined by the general assembly. The appointment or removal of the executive director shall not be subject to the provisions of chapter 19A.

[C73, 75, 77, 79, 81, §455B.2; 82 Acts, ch 1199, §2, 96]

Referred to in §467A.42
Confirmation, §2.32

455B.103 Executive director's duties.

The executive director shall:

1. Recommend to the commission the adoption of rules that are necessary for the effective administration of the department.
2. Recommend to the commission the adoption of rules to implement the programs and services assigned to it.
3. Direct and administer the programs and services of the department in compliance with the rules adopted by the commission.
4. Perform other duties assigned by the commission.
5. Establish or reorganize, with the approval of the commission, the administrative structure of the department.
6. Contract, with the approval of the commission, with public agencies of this state to provide all laboratory, scientific field measurement and environmental quality evaluation services necessary to implement the provisions of this chapter. If the executive director finds that public agencies of this state cannot provide the laboratory, scientific field measurement and envi-

ronmental evaluation services required by the department, the executive director may contract, with the approval of the commission, with any other public or private persons or agencies for such services or for scientific or technical services required to carry out the programs and services assigned to the department.

7. Prepare, on or before the first of September of each even-numbered year, the departmental budget request for each fiscal year of the ensuing biennium on the forms furnished, and including the information required, by the state comptroller.

8. Conduct investigations of complaints received directly or referred by the commission created in section 455B.104 or other investigations deemed necessary. While conducting an investigation, the executive director may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter or the rules or standards adopted under this chapter. However, the owner or person in charge shall be notified.

a. If the owner or occupant of any property refuses admittance thereto, or if prior to such refusal the executive director demonstrates the necessity for a warrant, the executive director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

b. In the application the executive director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the executive director it shall be identified in the application.

c. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

d. In making inspections and searches pursuant to the authority of this division, the executive director must execute the warrant:

- (1) Within ten days after its date.
- (2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapters 808 and 809.
- (3) Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

9. Accept, receive and administer grants or other funds or gifts from public or private agencies, includ-

ing the federal government, for the abatement, prevention, or control of pollution, or other environmental programs, subject to the approval of the commission.

10. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts relating to the control of pollution or the protection or enhancement of the environment. Any agreement is subject to the approval of the commission.

The executive director may appoint, with the approval of the commission, the technical, professional, secretarial, and clerical staff necessary to accomplish the purposes of this chapter, subject to the provisions of chapter 19A.

The executive director may appoint a member of the staff to be acting director in the executive director's absence. Such acting executive director shall have the powers delegated by the executive director.

The executive director and other employees of the department shall receive, in addition to salary, their necessary traveling and related expenses when engaged in the performance of official business.

[C66, §455B.14; C71, §136B.4, 136B.5, 455B.14; C73, §455B.3, 455B.12(12), 455B.13(3, 7), 455B.36, 455B.89(4); C75, 77, 79, §455B.3, 455B.12(12), 455B.13(6); C81, §455B.3]

84 Acts, ch 1158, §1

455B.104 Water, air and waste management commission.

1. There is created a water, air and waste management commission consisting of nine members, not more than five of whom shall be from the same political party. The members shall be appointed by the governor subject to confirmation by the senate. Each member of the commission must be an elector of the state, and have interest and knowledge of the subjects embraced in this chapter. The membership of the commission shall be as follows: Three members actively engaged in livestock and grain farming, a member actively engaged in the management of a manufacturing company, one member actively engaged in the business of finance or commerce, and four members who are electors of the state. The members of the commission shall be appointed to four-year, staggered terms of office commencing and ending as provided in section 69.19. Vacancies occurring during a term of office shall be filled by appointment for the balance of the unexpired term subject to confirmation by the senate. A commission member shall not be appointed to serve more than two consecutive four-year terms.

2. The commission shall organize annually with the election of a chairperson and vice chairperson. The commission shall meet monthly and at the call of the chairperson or upon written request of a majority of the members of the commission. The executive director shall attend the meetings of the commission and act as secretary to the commission.

3. A majority of the voting members of the commission shall constitute a quorum and the concurrence of a majority of the voting members shall be required to determine any matter relating to its powers and duties.

4. The members of the commission who are not in the full-time employment of a public agency shall be paid a per diem of forty dollars while engaged in the performance of the duties of office. Members shall be reimbursed for their actual and necessary expenses while performing the duties of office. Per diem and expenses shall be paid from funds appropriated to the department.

5. The members of the commission shall represent the public interest and at least a majority of the commission membership shall not derive more than ten percent of their income from any person subject to permits or enforcement orders under this chapter. A potential conflict of interest by a commission member shall be immediately disclosed to the commission and the department. In the case of conflict of interest, the commission member involved shall immediately withdraw from consideration of the issuance of a permit or enforcement action by the commission and shall not express an opinion on the matter to any other commission member involved in the consideration of the issuance of the permit or enforcement action. A "conflict of interest" arises when a commission member receives directly or indirectly personal income from a person subject to permit or enforcement action pending before the commission.

6. The executive director shall notify the secretary of agriculture, the commissioner of public health, the chief administrative officer of the department of soil conservation, the director of the state conservation commission, the Iowa geological survey, and the director of the state hygienic laboratory of the scheduled meetings of the commission.

[C71, §136B.3, 206A.1, 455B.4; C73, 75, 77, 79, §455B.4, 455B.5(1), 455B.6; C81, §455B.4; 82 Acts, ch 1199, §3, 96]

Referred to in §455B.103
Confirmation, §2.32

455B.105 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of programs under its jurisdiction. The commission shall appoint advisory committees to advise the commission and the executive director in carrying out their respective powers and duties.

2. Advise, consult, and co-operate with other agencies of the state, political subdivisions, and any other public or private agency to promote the orderly, efficient, and effective accomplishment of its responsibilities.

3. Adopt, modify, or repeal rules necessary to implement this chapter and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the

operations of the department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter. Rules adopted by the executive committee before January 1, 1981 shall remain effective until modified or rescinded by action of the commission.

4. Approve the departmental budget request prior to submission to the state comptroller. The commission may increase, decrease, or strike any proposed expenditure within the departmental budget request before granting approval.

5. Issue orders and directives necessary to insure integration and co-ordination of the programs administered by the department.

6. Make a concise annual report to the governor and the general assembly, which report shall contain information relating to the accomplishments and status of the programs administered by the department and include recommendations for legislative action which may be required to protect or enhance the environment or to modernize the operation of the department or any of the programs or services assigned to the department and recommendations for the transfer of powers and duties of the department as deemed advisable by the commission. The annual report shall conform to the provisions of section 17.3.

7. Approve all contracts and agreements between the department and other public or private persons or agencies.

8. Obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

9. Hold public hearings, except when the evidence to be received is confidential pursuant to this chapter or chapter 22, necessary to carry out its powers and duties. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as provided in civil actions.

10. Upon request of at least four members of the commission before adopting or modifying a rule, the executive director shall prepare and publish with the notice required under section 17A.4, subsection 1, paragraph "a", a comprehensive estimate of the economic impact of the proposed rule or modification.

11. Appoint a water coordinator who shall coordinate requests from the public for information or assistance relating to the administration of water resources laws and programs and the resolution of water-related problems.

12. a. Adopt, by rule, procedures and forms necessary to implement the provisions of this chapter relating to permits or conditional permits. The commission may also adopt, by rule, a schedule of fees for permit and conditional permit applications and a schedule of fees which may be periodically assessed for administration of permits and conditional permits. In determining the fee schedules, the commission shall consider:

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

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

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

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

b. The fees collected by the department under this subsection shall be remitted to the treasurer of state and credited to the general fund of the state.

[C50, 54, 58, 62, 66, §455A.9; C71, §136B.4(7), 455A.9; C73, 75, 77, 79, §455A.9, 455B.5, 455B.7, 455B.12(6); C81, §455A.9, 455B.5; 82 Acts, ch 1199, §4, 5, 96]

83 Acts, ch 136, §1; 83 Acts, ch 137, §1
Referred to in §455B.387

455B.106 Appeal board.

In lieu of an appeal being heard by the full membership of the commission, the chairperson of the commission may appoint an appeal board consisting of three or more members of the commission or a hearing officer to conduct a hearing on the appeal of an aggrieved person from the action or order of the executive director as provided in chapter 17A.

[C81, §455B.6]

455B.107 Warrants by comptroller.

The state comptroller shall draw warrants on the treasurer of state for all disbursements authorized by the provisions of this chapter upon itemized and verified vouchers bearing the approval of the executive director.

[C73, 75, 77, 79, 81, §455B.8]

455B.108 Office facilities.

The department of general services shall provide the department with appropriate office facilities.

[C73, 75, 77, 79, 81, §455B.9]

455B.109 Schedule of fines — minor violations.

1. The commission may establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than one thousand dollars for minor violations of this chapter or rules, permits or orders adopted or issued under this chapter. In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and executive director shall consider among other relevant factors the following:

a. The costs saved or likely to be saved by non-compliance by the violator.

b. The gravity of the violation.

c. The degree of culpability of the violator.

d. The maximum penalty authorized for that violation under this chapter.

Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation. Major violations, violations not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under this subsection.

2. If the commission establishes a schedule for minor violations, the commission shall provide, by rule, a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action.

3. A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final. When a person against whom a civil penalty is assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final for the purposes of this section until all judicial review processes are completed. Additional judicial review may not be sought after the order becomes final. A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. The attorney general shall institute, at the request of the department, summary proceedings to recover the penalty and any accrued interest.

4. All civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state.

5. This section does not require the commission or the executive director to pursue an administrative remedy before seeking a remedy in the courts of this state.

84 Acts, ch 1159, §1

455B.110 to 455B.130 Reserved.

DIVISION II

AIR QUALITY

Sections 455B.10 to 455B.29, Code 1981, renumbered as §455B.131 to 455B.149 in Code 1983

455B.131 Definitions.

When used in this division II, unless the context otherwise requires:

1. "Air contaminant" means dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof.

2. "Air contaminant source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

Air contaminant source includes, but is not limited to, all types of businesses, commercial and industrial plants, works, shops, and stores, heating and power plants and stations, buildings and other structures of all types including single and multiple family resi-

dences, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses, aircraft, and other motor vehicles, garages, vending and service locations and stations, railroad locomotives, ships, boats, and other water-borne craft, portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

3. "Air pollution" means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.

4. "Atmosphere" means all space outside of buildings, stacks or exterior ducts.

5. "Emission" means a release of one or more air contaminants into the outside atmosphere.

6. "Person" means an individual, partnership, co-partnership, co-operative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, an agency or department of the federal government or any other legal entity, or a legal representative, agent, officer, employee or assigns of such entities.

7. "Political subdivision" means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof.

8. "Major stationary source" means a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the commission or the administrator of the United States environmental protection agency.

9. "Schedule and timetable of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

[C71, §136B.2; C73, 75, 77, 79, 81, §455B.10]

Referred to in §427.1

455B.132 Executive agency.

The department shall be the agency of the state to prevent, abate, or control air pollution.

[C73, 75, 77, 79, 81, §455B.11]

455B.133 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the abatement, control, and prevention of air pollution in this state, recognizing varying requirements for different areas in the state. The plans may include emission limitations, schedules and timetables for compliance with the limitations, measures to prevent the significant deterioration of air quality and other measures as necessary to assure attainment and maintenance of ambient air quality standards.

2. Adopt, amend, or repeal rules pertaining to the evaluation, abatement, control, and prevention of air pollution. The rules may include those that are necessary to obtain approval of the state implementation plan under section 110 of the federal Clean Air Act as amended through January 1, 1979.

3. Adopt, amend, or repeal ambient air quality standards for the atmosphere of this state on the basis of providing air quality necessary to protect the public health and welfare.

4. Adopt, amend or repeal emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source. The standards or limitations adopted under this section shall not exceed the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended to January 1, 1979. This does not prohibit the commission from adopting a standard for a source or class of sources for which the United States environmental protection agency has not promulgated a standard.

a. (1) The commission shall establish standards of performance unless in the judgment of the commission it is not feasible to adopt or enforce a standard of performance. If it is not feasible to adopt or enforce a standard of performance, the commission may adopt a design, equipment, material, work practice or operational standard, or combination of those standards in order to establish reasonably available control technology or the lowest achievable emission rate in non-attainment areas, or in order to establish best available control technology in areas subject to prevention of significant deterioration review, or in order to adopt the emission limitations promulgated by the administrator of the United States environmental protection agency under section 111 or 112 of the federal Clean Air Act as amended to January 1, 1979.

(2) If a person establishes to the satisfaction of the commission that an alternative means of emission limitation will achieve a reduction in emissions of an air pollutant at least equivalent to the reduction in emissions of the air pollutant achieved under the design, equipment, material, work practice or operational standard, the commission shall amend its rules to permit the use of the alternative by the source for purposes of compliance with this paragraph with respect to the pollutant.

(3) A design, equipment, material, work practice or operational standard promulgated under this paragraph shall be promulgated in terms of a standard of performance when it becomes feasible to promulgate and enforce the standard in those terms.

(4) For the purpose of this paragraph, the phrase "not feasible to adopt or enforce a standard of performance" refers to a situation in which the commission determines that the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

b. If the maximum standards for the emission of sulphur dioxide from solid fuels have to be reduced in an area to meet ambient air quality standards, a contract for coal produced in Iowa and burned by a facility in that area that met the sulphur dioxide emission standards in effect at the time the contract went into effect shall be exempted from the decreased requirement until the expiration of the contract period or December 31, 1983, whichever first occurs, if there is any other reasonable means available to satisfy the ambient air quality standards. To qualify under this

subsection, the contract must be recorded with the county recorder of the county where the burning facility is located within thirty days after the signing of the contract.

c. The degree of emission limitation required for control of an air contaminant under an emission standard shall not be affected by that part of the stack height of a source that exceeds good engineering practice, as defined in rules, or any other dispersion technique. This paragraph shall not apply to stack heights in existence before December 30, 1970, or dispersion techniques implemented before that date.

5. Classify air contaminant sources according to levels and types of emissions, and other characteristics which relate to air pollution. The commission may require, by rule, the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods at such locations and intervals, and using such procedures as the commission shall prescribe, and provide such other information as the commission may reasonably require. Such classifications may be for application to the state as a whole, or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

6. a. Require, by rules, notice of the construction of any air contaminant source which may cause or contribute to air pollution, and the submission of plans and specifications to the department, or other information deemed necessary, for the installation of air contaminant sources and related control equipment. The rules shall allow the owner or operator of a major stationary source to elect to obtain a conditional permit in lieu of a construction permit. The rules relating to a conditional permit for an electric power generating facility subject to chapter 476A and other major stationary sources shall allow the submission of engineering descriptions, flow diagrams and schematics that quantitatively and qualitatively identify emission streams and alternative control equipment that will provide compliance with emission standards. Such rules shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce such levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind or composition of fuels permitted to be sold, stored, or used unless authorized by subsection 4 of this section.

b. The commission may give technical advice pertaining to the construction or installation of the equipment or any other recommendation.

7. Commission rules establishing maximum permissible sulfate content shall not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

[C71, §136B.4; C73, 75, 77, 79, 81, §455B.12; 82 Acts, ch 1124, §1]

455B.134 Executive director — duties — limitations.

The executive director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II.

3. Grant, modify, or deny permits for the construction of new or modified air contaminant sources and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A and other major stationary sources, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source.

b. The condition of expected performance shall be reasonably detailed in the construction or conditional permit.

c. All applications for permits other than conditional permits for electric generating facilities shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit other than a conditional permit for an electric generating facility, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission.

d. All applications for conditional permits for electric power generating facilities shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agreement pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the executive director or by 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 drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.

e. (1) Notwithstanding any other provision of division II of this chapter, the following siting requirements shall apply to anaerobic lagoons:

Anaerobic lagoons which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds 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 apply to the construction of new facilities and the expansion of existing facilities.

Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution. In making the orders, the executive director shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical proper-

ty of the public, the practicability of reducing or limiting the emissions from the air pollution source, and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary co-operation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter. The executive director may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

[C71, §136B.4, 136B.5; C73, 75, 77, 79, §455B.12, 455B.13; C81, §455B.13; 82 Acts, ch 1124, §2, 3]

Referred to in §455B.145

455B.135 Limit on authority.

Nothing contained in this division II shall be deemed to grant to the commission or the executive director any authority or jurisdiction with respect to air pollution existing solely within residences; or solely within commercial and industrial plants, works, or shops under the jurisdiction of chapters 88 and 91; or to affect the relations between employers and employees with respect to, or arising out of, any condition of air pollution.

[C71, §136B.6; C73, 75, 77, 79, 81, §455B.14]

455B.136 Assistance on demand.

The commission and the executive director may request and receive assistance from any other agency, department, or educational institution of the state, or political subdivision thereof, when it is deemed necessary or beneficial by the commission or the executive director. The department may reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

[C71, §136B.7; C73, 75, 77, 79, 81, §455B.15]

455B.137 Privileged information.

Information received by the commission or any employees of the department through filed reports, inspections, or as otherwise authorized in this division II concerning trade secrets, secret industrial processes, or other privileged communications, except emission data, shall not be disclosed or opened to public inspection, except as may be necessary in a proceeding concerning a violation of said division or of any rules promulgated thereunder, or as otherwise authorized or ordered by appropriate court action or proceedings. Nothing herein shall be construed to prevent the executive director from compiling or publishing analyses

or summaries relating to the general condition of the atmosphere; provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

[C71, §136B.8; C73, 75, 77, 79, 81, §455B.16]

Referred to in §455B.134, 455B.138

455B.138 Resolution of violations — appeal.

1. When the executive director has evidence that a violation of any provision of division II of this chapter, or rule, standard or permit established or issued under division II has occurred, the executive director shall notify the alleged violator and, by informal negotiation, attempt to resolve the problem. If the negotiations fail to resolve the problem within a reasonable period of time, the executive director shall issue an order directing the violator to prevent, abate or control the emissions or air pollution involved. The order shall prescribe the date by which the violation shall cease and may prescribe timetables for necessary action to prevent, abate or control the emissions of air pollution. The order may be appealed to the commission.

2. After the hearing on appeal, the commission may affirm, modify or rescind the order of the executive director.

3. The executive director shall keep a complete record of the hearings and proceeding and the record shall be open to public inspection, subject to section 455B.137. Upon request, a copy of the transcript shall be furnished to the violator or alleged violator at the violator's or alleged violator's expense.

4. An appeal to the commission under this section shall be conducted as a contested case under chapter 17A.

[C71, §136B.9; C73, 75, 77, 79, 81, §455B.17]

Referred to in §455B.149

455B.139 Emergency orders.

If the executive director has evidence that any person is causing air pollution and that such pollution creates an emergency requiring immediate action to protect the public health and safety, or property, the executive director may, without notice, issue an emergency order requiring such person to reduce or discontinue immediately the emission of air contaminants. A copy of the emergency order shall be served by personal service. An emergency order issued by the executive director may be appealed to the commission. After hearing on appeal, the commission may affirm, modify or rescind the order of the executive director.

[C71, §136B.9(5); C73, 75, 77, 79, 81, §455B.18]

Referred to in §455B.145

455B.140 Judicial review.

Judicial review of actions of the commission or of the executive director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed.

[C71, §136B.10; C73, 75, 77, 79, 81, §455B.19]

455B.141 Legal action.

If action to prevent, control, or abate air pollution is not taken in accordance with the rules established, or orders issued by the department, or if the executive director has evidence that an emergency exists by reason of air pollution which requires immediate action to protect the public health or property, the attorney general, at the request of the executive director, shall commence legal action, in the name of the state, for an injunction to prevent any further or continued violation of such rule or order.

[C71, §136B.11; C73, 75, 77, 79, 81, §455B.20]

Referred to in §455B.142, 455B.145

455B.142 Burden of proof.

In all proceedings with respect to any alleged violation of the provisions of this division II or any rule established by the commission, the burden of proof shall be upon the department except in an action for an injunction as provided in section 455B.141.

[C71, §136B.12; C73, 75, 77, 79, 81, §455B.21]

455B.143 Variance.

Any person who owns or operates any plant, building, structure, process, or equipment may apply for a variance from the rules or standards adopted by the commission by filing an application with the department. The application shall be accompanied by such information and data required by the commission.

1. The executive director shall promptly investigate the application and approve or disapprove the application. The executive director may grant a variance if the executive director finds that:

a. The emissions occurring or proposed to occur do not endanger or tend to endanger human health or safety or property; and

b. Compliance with the rules or standards from which the variance is sought will produce serious hardship without equal or greater benefits to the public.

2. The applicant may request a review hearing before the commission if the application is denied.

3. In determining under what conditions and to what extent a variance may be granted, the executive director shall give due recognition to the progress which the applicant has made toward eliminating or preventing air pollution. In such a case, the executive director shall consider the reasonableness of the request, conditioned upon such applicant effecting a partial abatement of the particular air pollution within a reasonable period of time, or the executive director may prescribe other requirements with which such applicant shall comply.

4. The executive director may grant a variance for a specified period of time, not exceeding one year, and the executive director may further specify that the applicant make periodic reports specifying the progress that has been made toward compliance with any rule for which the variance was granted. A variance may be extended from year to year by affirmative action of the executive director.

5. The executive director shall maintain a record of each variance granted specifying the reasons for its issuance or extension.

[C71, §136B.13; C73, 75, 77, 79, 81, §455B.22]

455B.144 Local control program.

1. Any political subdivision may conduct an air pollution control program within the boundaries of its jurisdiction, or may jointly conduct an air pollution control program with other political subdivisions of this state or of other states, except that every joint program shall be established and administered as provided in chapter 28E. In conducting such programs, political subdivisions may adopt and enforce rules or standards to secure and maintain adequate air quality within their respective jurisdictions.

2. If the board of supervisors in any county establishes an air pollution control program and has obtained a certificate of acceptance, the agency implementing the program may regulate air pollution within the county including any incorporated areas therein until such incorporated areas obtain a certificate of acceptance as a joint or separate agency.

[C71, §136B.14; C73, 75, 77, 79, 81, §455B.23]

Referred to in §331.382

455B.145 Acceptance of local program.

When an air pollution control program conducted by a political subdivision, or a combination thereof, is deemed upon review as provided in section 455B.134, to be consistent with the provisions of this division II or the rules established thereunder, the executive director shall accept such program in lieu of state administration and regulation of air pollution within the political subdivisions involved. Nothing contained in this section shall be construed to limit the power of the executive director to take emergency action under the provisions of sections 455B.139 and 455B.141 or to administer a part of the local program that has been suspended.

1. In evaluating an air pollution control program, consideration shall be given to whether such program provides for the following:

a. Ordinances, rules and standards establishing requirements consistent with, or more strict than, those imposed by this division II or rules and standards adopted by the commission.

b. Enforcement of such requirements by appropriate administrative and judicial process.

c. Administrative organization, staff, financial and other resources necessary to administer an efficient and effective program.

d. Location of emission monitoring devices in areas of the political subdivision in compliance with uniform state standards adopted by the commission. The commission shall adopt uniform state standards for the location of emission monitoring devices specifying such intervals and such procedures to provide a reasonably consistent measurement of emissions from air contaminant sources regardless of the political subdivision of the state in which the sources may be located.

2. Upon acceptance of a local air pollution control program, the executive director shall issue a certificate of acceptance to the appropriate local agency.

a. Any political subdivision desiring a certificate of acceptance shall apply to the department on forms prescribed by the executive director.

b. The executive director shall promptly investigate the application and approve or disapprove the application. The executive director may conduct a public hearing before action is taken to approve or disapprove. If the executive director disapproves issu-

ing a certificate, the political subdivision may appeal the action to the commission. At the hearing on appeal, the commission shall decide whether the local program is substantially consistent with the provisions of this division II, or rules adopted thereunder, and whether the local program is being enforced. The burden of proof shall be upon the political subdivision.

c. If the executive director determines at any time that a local air pollution program is being conducted in a manner inconsistent with the substantive provisions of this division II or the rules adopted thereunder, the executive director shall notify the political subdivision, citing the deviations from the acceptable standards and the corrective measures to be completed within a reasonable amount of time. If the corrective measures are not implemented as prescribed, the executive director shall suspend in whole or in part the certificate of acceptance of such political subdivision and shall administer the regulatory provisions of said division in whole or in part within the political subdivision until the appropriate standards are met. Upon receipt of evidence that necessary corrective action has been taken, the executive director shall reinstate the suspended certificate of acceptance, and the political subdivision shall resume the administration of the local air pollution control program within its jurisdiction. In cases where the certificate of acceptance is suspended, the political subdivision may appeal the suspension to the commission.

d. Nothing in this division II shall be construed to supersede the jurisdiction of any local air pollution control program in operation on the first of January, 1973, except that any such program shall meet all requirements of said division.

[C71, §136B.15; C73, 75, 77, 79, 81, §455B.24]

Referred to in §331.382

455B.146 Civil action for compliance.

If any order, permit or rule of the commission is being violated, the attorney general shall, at the request of the commission or the executive director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit or rule, or for the assessment of a civil penalty as determined by the court, not to exceed five thousand dollars per day for each day such violation continues, or both such injunctive relief and civil penalty.

[C71, §136B.16; C73, 75, 77, 79, 81, §455B.25]

455B.147 Failure — procedure.

1. If the executive director fails to take action within sixty days after an application for a variance is made, or if the commission fails to enter a final order or determination within sixty days after the final argument in hearing on appeal, the person seeking the action may treat the failure to act as a grant of the requested variance, or of a finding favorable to the respondent in hearing on appeal, as the case may be.

2. If the executive director fails to take action within one hundred twenty days after a completed application for a construction permit is made, or if the commission fails to enter a final order or determination within sixty days after the final argument in a hearing on appeal of the permit, the person seeking the action may treat the failure to act as a grant of the

requested permit, or of a finding favorable to the respondent in a hearing on appeal, as the case may be.

3. The section shall not apply to an application for a conditional permit for an electrical power generating facility subject to chapter 476A.

[C71, §136B.17; C73, 75, 77, 79, 81, §455B.26]

455B.148 Fees. Repealed by 83 Acts, ch 136, §8; see §455B.105(12).

455B.149 Energy or economic emergency.

1. Upon application by the owner or operator of a fuel-burning stationary source, and after notice and opportunity for public hearing, the commission may petition the president, under section 110, subsection "f," paragraph 1 of the federal Clean Air Act as amended to January 1, 1979, for a determination that a national or regional energy emergency exists. If the president determines an emergency exists, the commission may suspend any requirement of this division or a rule or permit issued under this division. A temporary emergency suspension under this subsection shall be issued only if there exists in the vicinity of the source a temporary emergency involving high levels of unemployment or loss of necessary energy supplies for residential buildings and if the unemployment or loss can be totally or partially alleviated by the suspension. Only one suspension may be issued for a source on the basis of the same set of circumstances or on the basis of the same emergency. A suspension shall remain in effect for a maximum of four months. The commission may include in a suspension a provision directing the executive director to delay for a period identical to the period of the suspension a compliance schedule or increment of progress to which the source is subject under section 455B.138, if the source is unable to comply with the schedule or increment solely because of the conditions on the basis of which the suspension was issued.

2. If a plan revision has been submitted to the administrator of the United States environmental protection agency under section 110 of the federal Clean Air Act as amended to January 1, 1979, and if the commission determines that the revision meets the requirements of that section and the revision is necessary to prevent the closing of an air contaminant source for one year or more and to prevent substantial increases in unemployment which would result from the closing, and if the administrator has not approved or disapproved within the required four-month period, the commission may issue a temporary emergency suspension of the part of the applicable implementation plan which is proposed to be revised with respect to the source. The determination under this subsection shall not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved. A temporary emergency suspension issued under this subsection shall remain in effect for a maximum of four months. A temporary emergency suspension under this subsection may include a provision directing the executive director to delay for a period identical to the period of the suspension a compliance schedule or increment of progress to which the source is subject under section 119 of the federal Clean Air Act as in effect prior to August 7, 1977, or section 113, subsection "d" of the

federal Clean Air Act as amended to January 1, 1979, upon a finding that the source is unable to comply with the schedule or increment solely because of the conditions on the basis of which a suspension was issued under this subsection.

[C81, §455B.29]

455B.150 to 455B.170 Reserved.

DIVISION III
WATER QUALITY

PART I
GENERAL

Sections 455B.30 to 455B.49, Code 1981, renumbered as §455B.171 to 455B.187 in Code 1983

455B.171 Definitions.

When used in this part I of division III, unless the context otherwise requires:

1. *"Sewage"* means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such ground water infiltration and surface water as may be present.
2. *"Industrial waste"* means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade or business or from the development of any natural resource.
3. *"Other waste"* means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals and all other wastes which are not sewage or industrial waste.
4. *"Water pollution"* means the contamination of any water of the state so as to create a nuisance or render such water unclean, noxious or impure so as to be actually harmful, detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, agricultural or recreational use or to livestock, wild animals, birds, fish or other aquatic life.
5. *"Sewer system"* means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act, ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this Act. [66GA, ch 1204]
6. *"Treatment works"* means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing or disposing of sewage, industrial waste or other wastes.
7. *"Disposal system"* means a system for disposing of sewage, industrial waste and other wastes and includes sewer systems, treatment works, point sources and dispersal systems.

8. *"Federal Water Pollution Control Act"* means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as published in 33 U.S.C. secs. 1251-1376, as amended through December 31, 1981.

9. *"Water of the state"* means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

10. *"Person"* means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

11. *"Effluent standard"* means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard or other limitation.

12. *"Point source"* means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

13. *"Pollutant"* means sewage, industrial waste or other waste.

14. *"New source"* means any building, structure, facility or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

15. *"Schedule of compliance"* means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

16. *"Sewer extension"* means pipelines or conduits constituting main sewers, lateral sewers or trunk sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

17. *"Water supply distribution system extension"* means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer's service connection.

18. *"Production capacity"* means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

19. *"Public water supply system"* means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. The term includes any source of water and any collection, treatment, storage, and dis-

tribution facilities under control of the operator of the system and used primarily in connection with the system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

20. "Maximum contaminant level" means the maximum permissible level of any physical, chemical, biological or radiological substance in water which is delivered to any user of a public water supply system.

21. "Private water supply" means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

22. "Private sewage disposal system" means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis.

23. "Semi-public sewage disposal system" means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under section 1288 of the federal Water Pollution Control Act (33 U.S.C. sec. 1288).

[C66, 71, §455B.2; C73, 75, 77, 79, 81, §455B.30; 82 Acts, ch 1050, §1, 2, ch 1199, §6, 7, 8, 96]

83 Acts, ch 137, §2; 84 Acts, ch 1121, §1, 2

Referred to in §427.1, 455B.241

455B.172 Jurisdiction of department and local boards.

1. The department is the agency of the state to prevent, abate, or control water pollution and to conduct the public water supply program.

2. The department is the state agency designated to carry out the state responsibilities related to private water supplies and private sewage disposal systems for the protection of the health of the citizens of this state. The commission shall adopt minimum standards and provide model standards for private water supplies and private sewage disposal facilities for use of the local boards of health. Each local board of health is the agency to regulate private water supplies and private sewage disposal systems, but the department shall maintain jurisdiction over discharges to a water of the state. Each local board of health shall adopt standards relating to the design and construction of private water supplies and private sewage disposal facilities, which standards shall not be lower than the minimum standards adopted by the commission.

[C66, 71, §455B.3; C73, §455B.31; C75, 77, 79, 81, §135.20, 455B.31; 82 Acts, ch 1199, §9]

83 Acts, ch 137, §3; 84 Acts, ch 1121, §3

455B.173 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards. The effluent standards may provide for maintaining the existing quality of the water of the state where the quality thereof exceeds the requirements of the water quality standards.

If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 and 169 or both sections of the Internal Revenue Code of 1954, whichever period ends first.

3. Establish, modify or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions under which the executive director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to or modification of any disposal system or public water supply system, or for the discharge of any pollutant or for the disposal of water wastes resulting from poultry and livestock operations. The rules specifying the conditions under which the executive director shall issue permits for the construction of an electric power generating facility subject to chapter 476A shall provide for issuing a conditional permit upon the submission of engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems that will provide compliance with effluent standards or limitations.

No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

A publicly owned treatment works whose discharge meets the final effluent limitations which were contained in its discharge permit on the date that construction of the publicly owned treatment works was approved by the department shall not be required to

meet more stringent effluent limitations for a period of ten years from the date the construction was completed and accepted but not longer than twelve years from the date that construction was approved by the department.

4. Co-operate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.

5. Establish, modify or repeal rules relating to drinking water standards for public water supply systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.

6. Establish, modify or repeal rules relating to inspection, monitoring, record keeping and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

7. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall co-operate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into an agreement, subject to approval of the commission, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be co-ordinated with disaster emergency plans.

8. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. The material standards for polyvinyl chloride pipe shall not exceed the specifications for polyvinyl chloride pipe in designations D-1784-69, D-2241-73, D-2564-76, D-2672-76, D-3036-73 and D-3139-73 of the American society of testing and material. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards avail-

ble to governmental subdivisions and to the public.

[C97, §2565; C24, 27, 31, 35, 39, §2220; C46, 50, 54, 58, 62, §136.3(2,c); C66, 71, §136.3(2,c), 455B.9; C73, 75, §455B.32, 455B.65; C77, 79, 81, §455B.32; 82 Acts, ch 1199, §10, 96]

83 Acts, ch 136, §2

Referred to in §455B.183

455B.174 Executive director's duties.

The executive director shall:

1. Conduct investigations of alleged water pollution or of alleged violations of this part of this division or any rule adopted or any permit issued pursuant thereto upon written request of any state agency, political subdivision, local board of health, twenty-five residents of the state, as directed by the commission, or as may be necessary to accomplish the purposes of this part of this division.

2. Conduct periodic surveys and inspection of the construction, operation, self-monitoring, record keeping and reporting of all public water supply systems and all disposal systems except as provided in section 455B.183.

3. Take any action or actions allowed by law which, in the executive director's judgment, are necessary to enforce or secure compliance with the provisions of this part of this division or of any rule or standard established or permit issued pursuant thereto.

4. Approve or disapprove the plans and specifications for the construction of disposal systems or public water supply systems except for those sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.183. The executive director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to or modification of any disposal system or public water supply system except for sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.183. The executive director shall also issue, revoke, suspend, modify or deny permits for the discharge of any pollutant. The permits shall contain conditions and schedules of compliance as necessary to meet the requirements of this part of this division and the federal Water Pollution Control Act. A permit shall not be issued to operate or discharge from any disposal system unless the conditions of the permit assure that any discharge from the disposal system meets or will meet all applicable state and federal water quality standards and effluent standards and the issuance of the permit is not otherwise prohibited by the federal Water Pollution Control Act. All applications for discharge permits are subject to public notice and opportunity for public participation including public hearing as the commission may by rule require. The executive director shall promptly notify the applicant in writing of the executive director's action and, if the permit is denied, state the reasons for denial. The applicant may appeal to the commission from the denial of a permit or from any condition in any permit if the applicant files notice of appeal with the executive director within thirty days of the notice of denial or issuance of the permit. The executive director shall notify the applicant within thirty days of the time and place of the hearing.

Copies of all forms or other paper instruments required to be filed during on-site inspections or investigations shall be given to the owner or operator of the disposal system or public water supply system being investigated or inspected before the inspector or investigator leaves the site. Any other report, statement, or instrument shall not be filed with the department unless a copy is sent by ordinary mail to the owner or operator of the disposal system or public water supply system within ten working days of the filing. If an inspection or investigation is done in co-operation with another state department, the department involved and the areas inspected shall be stated.

The executive director shall also issue or deny conditional permits for the construction of disposal systems for electric power generating facilities subject to chapter 476A. All 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 476A and any agreement pursuant thereto under chapter 28E. 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 476A, 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.

5. Conduct random inspections of work done by city and county public works departments to ensure such public works departments are complying with this Act [66GA, ch 1204]. If a city or county public works department is not complying with section 455B.183 in reviewing plans and specifications or in granting permits or both, the department shall perform these functions in that jurisdiction until the city or county public works department is able to perform them. Performance of these functions in a jurisdiction by a local public works department shall not be suspended or revoked until after notice and opportunity for hearing as provided in chapter 17A.

The department shall give technical assistance to city and county public works departments upon request of such local public works departments.

[C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, §135.11(7); C66, 71, §135.11(7), 455B.9-455B.11, 455B.15, 455B.17; C73, 75, §455B.33, 455B.37, 455B.66; C77, 79, 81, §455B.33; 82 Acts, ch 1050, §3]

83 Acts, ch 137, §4

455B.175 Violations.

If there is substantial evidence that any person has violated or is violating any provision of this part of this division, or of any rule or standard established or permit issued pursuant thereto; then:

1. The executive director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action

as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act by filing with the executive director within thirty days a notice of appeal to the commission. On appeal the commission may affirm, modify or vacate the order of the executive director; or

2. 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 hearing before the commission or by a court; or

3. The executive director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.187.

[C66, 71, §455B.12, 455B.15, 455B.17; C73, 75, §455B.34, 455B.37; C77, 79, 81, §455B.34]

83 Acts, ch 137, §5

455B.176 Criteria considered.

In establishing, modifying, or repealing water quality standards the commission shall base its decision upon data gathered from sources within the state regarding the following:

1. The protection of the public health;
2. The size, depth, surface area covered, volume, direction and rate of flow, stream gradient, and temperature of the affected water of the state;
3. The character and uses of the land area bordering the affected water of the state;
4. The uses which have been made, are being made, or may be made of the affected water of the state for public, private, or domestic water supplies, irrigation, livestock watering, propagation of wildlife, fish, and other aquatic life; bathing, swimming, boating, or other recreational activity; transportation; and disposal of sewage and wastes;
5. The extent of contamination resulting from natural causes including the mineral and chemical characteristics;
6. The extent to which floatable or settleable solids may be permitted;
7. The extent to which suspended solids, colloids, or a combination of solids with other suspended substances may be permitted;
8. The extent to which bacteria and other biological organisms may be permitted;
9. The amount of dissolved oxygen that is to be present and the extent of the oxygen demanding substances which may be permitted;
10. The extent to which toxic substances, chemicals or deleterious conditions may be permitted;
11. The economic costs and benefits. The goal shall be a reasonable balance between total costs to the people and to the economy, and the resultant benefits to the people of Iowa.

[C66, 71, §455B.13; C73, 75, 77, 79, 81, §455B.35]

455B.177 Declaration of policy.

1. The general assembly finds and declares that because the federal Water Pollution Control Act, pro-

vides for a permit system to regulate the discharge of pollutants into the waters of the United States and provides that permits may be issued by states which are authorized to implement that Act, it is in the interest of the people of Iowa to enact this Act [66GA, ch 1204] in order to authorize the state to implement the federal Water Pollution Control Act, and federal regulations and guidelines issued pursuant to that Act.

2. The general assembly further finds and declares that because the federal Safe Drinking Water Act, Public Law 93-523, provides for the implementation of said Act by states which have adequate authority to do so, it is in the interest of the people of Iowa to implement the provisions of the federal Safe Drinking Water Act and federal regulations and guidelines issued pursuant thereto.

[C77, 79, 81, §455B.36; 82 Acts, ch 1050, §4]

455B.178 Judicial review.

Except as provided in section 455B.187, subsection 6, 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 the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or such final order was entered.

[C66, 71, §455B.18; C73, 75, 77, 79, 81, §455B.39]

Referred to in §455B.187

455B.179 Trade secrets protected.

Upon a satisfactory showing by any person to the executive director that public disclosure of any record, report, permit, permit application or other document or information or part thereof would divulge methods or processes entitled to protection as a trade secret, any such record, report, permit, permit application or other document or part thereof other than effluent data and analytical results of monitoring or public water supply systems, shall be accorded confidential treatment. Notwithstanding the provisions of chapter 22, a person in connection with duties or employment by the department shall not make public any information accorded confidential status, however any such record or other information accorded confidential status may be disclosed or transmitted to other officers, employees or authorized representatives of this state or the United States concerned with carrying out this part of this division or when relevant in any proceeding under this Act [66GA, ch 1204].

[C66, 71, §455B.17; C73, 75, §455B.37; C77, 79, 81, §455B.40]

455B.180 Stay order.

The granting of a stay may be conditioned upon the furnishing by the appellant of such reasonable security as the court may direct. A stay may be vacated on application of the department or any other party after hearing by the court.

[C66, 71, §455B.20; C73, 75, 77, 79, 81, §455B.41]

455B.181 Variances and exemptions.

The executive director may, after public notice and hearing, grant exemptions from a maximum contaminant level or treatment technique, or both. The executive director may also grant a variance from drinking

water standards for public water supply systems when the characteristics of the raw water sources, which are available to a system, cannot meet the requirements with respect to maximum contaminant level of the standards despite application of the best treatment techniques which are generally available and if the executive director determines that the variance will not result in an unreasonable risk to the public health. A schedule of compliance may be prescribed by the executive director, at the time the variance or exemption is granted. The executive director shall also require the interim measures to minimize the contaminant levels of systems subject to the variance or exemption as may reasonably be implemented. The executive director may also issue variances from other rules of the commission if necessary and appropriate. The denial of a variance or exemption may be appealed to the commission.

[C77, 79, 81, §455B.42]

455B.182 Failure constitutes contempt.

Failure to obey any order issued by the department with reference to a violation of this part of this division or any rule promulgated or permit issued pursuant thereto shall constitute prima-facie evidence of contempt. In such event the department may certify to the district court of the county in which such alleged disobedience occurred the fact of such failure. The district court after notice, as prescribed by the court, to the parties in interest shall then proceed to hear the matter and if it finds that the order was lawful and reasonable it shall order the party to comply with the order. If the person fails to comply with the court order, that person shall be guilty of contempt and shall be fined not to exceed five hundred dollars for each day that the person fails to comply with the court order. The penalties provided in this section shall be considered as additional to any penalty which may be imposed under the law relative to nuisances or any other statute relating to the pollution of any waters of the state or related to public water supply systems and a conviction under this section shall not be a bar to prosecution under any other penal statute.

[C66, 71, §455B.24; C73, 75, 77, 79, 81, §455B.44]

Referred to in §455B.187

455B.183 Written permits required.

It is unlawful to carry on any of the following activities without first securing a written permit from the executive director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the commission:

1. The construction, installation or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto except those sewer extensions and water supply distribution system extensions that are subject to review and approval by a city or county public works department pursuant to this section and private sewage disposal systems. A permit shall be issued for the construction, installation or modification of a public water supply system or part of a system if a qualified, registered engineer certifies to the commission that the plans for the system or part of the system meet the requirements of state and federal law or regulations.

The permit shall state that approval is based only upon the engineer's certification that the system's design meets the requirements of all applicable state and federal laws and regulations and the review of the department shall be advisory.

2. The construction or use of any new point source for the discharge of any pollutant into any water of the state.

3. The operation of any waste disposal system or public water supply system or any part of or extension or addition to the system. This provision does not apply to a pretreatment system the effluent of which is to be discharged directly to another disposal system for final treatment and disposal, a semi-public sewage disposal system, the construction of which has been approved by the department and which does not discharge into water of the state or a private sewage disposal system which does not discharge into a water of the state. The exemption of this paragraph shall not apply to any industrial waste discharges.

Upon adoption of standards by the commission pursuant to section 455B.173, subsections 5 to 8, plans and specifications for sewer extensions and water supply distribution system extensions covered by this section shall be submitted to the city or county public works department for approval if the local public works department employs a qualified, registered engineer who reviews the plans and specifications using the specific state standards known as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems that have been formulated and adopted by the commission pursuant to section 455B.173, subsections 5 to 8. The local agency shall issue a written permit to construct if all of the following apply:

a. The submitted plans and specifications are in substantial compliance with departmental rules and the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems.

b. The extensions primarily serve residential consumers and will not result in an increase greater than five percent of the capacity of the treatment works or serve more than two hundred fifty dwelling units or, in the case of an extension to a water supply distribution system, the extension will have a capacity of less than five percent of the system or will serve fewer than two hundred fifty dwelling units.

c. The proposed sewer extension will not exceed the capacity of any treatment works which received a state or federal monetary grant after 1972.

d. The proposed water supply distribution system extension will not exceed the production capacity of any public water supply system constructed after 1972.

After issuing a permit, the city or county public works department shall notify the executive director of such issuance by forwarding a copy of the permit to the executive director. In addition, the local agency shall submit quarterly reports to the executive director including such information as capacity of local treatment plants and production capacity of public water supply systems as well as other necessary information requested by the executive director for the purpose of implementing this chapter.

Plans and specifications for all other waste disposal systems and public water supply systems, including

sewer extensions and water supply distribution system extensions not reviewed by a city or county public works department under this section, shall be submitted to the department before a written permit may be issued. Plans and specifications for public water supply systems and water supply distribution system extensions must be certified by a registered engineer as provided in subsection 1. The construction of any such waste disposal system or public water supply system shall be in accordance with standards formulated and adopted by the commission pursuant to section 455B.173, subsections 5 to 8. If it is necessary or desirable to make material changes in the plans or specifications, revised plans or specifications together with reasons for the proposed changes must be submitted to the department for a supplemental written permit. The revised plans and specifications for a public water supply system must be certified by a registered engineer as provided in subsection 1.

Prior to the adoption of statewide standards, the department may delegate the authority to review plans and specifications to those governmental subdivisions if in addition to compliance with subsection 3 the governmental subdivisions agree to comply with all state and federal regulations and submit plans for the review of plans and specifications including a complete set of local standard specifications for such improvements.

The executive director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in chapter 17A if the executive director determines that a city or county public works department has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of public water supply systems or which otherwise violate state or federal requirements.

The department shall exempt any public water supply system from any requirement respecting a maximum contaminant level or any treatment technique requirement of an applicable national drinking water regulation if these regulations apply to contaminants which the commission determines are harmless or beneficial to the health of consumers and if the owner of a public water supply system determines that funds are not reasonably available to provide for controlling amounts of those contaminants which are harmless or beneficial to the health of consumers.

[C66, 71, §455B.25; C73, 75, 77, 79, 81, §455B.45; 82 Acts, ch 1199, §11, 96]

83 Acts, ch 137, §6; 84 Acts, ch 1099, §1; 84 Acts, ch 1121, §4

Referred to in §455B.174, 455B.187

455B.184 Disposal system plans.

The department may also require the owner of a disposal system, discharging pollutants into any water of the state, or of a public water supply system to file with it complete plans of the whole or any part of such system and any other information and records concerning the installation and operation of such system.

[C66, 71, §455B.26; C73, 75, 77, 79, 81, §455B.46]

455B.185 Data from departments.

The commission and the executive director may request and receive from any department, division, board, bureau, commission, public body, or agency of

the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the commission or the executive director to properly carry out their activities and effectuate the purposes of this part 1 of division III. The department shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

[C66, 71, §455B.27; C73, 75, 77, 79, 81, §455B.47]

455B.186 Prohibited discharges.

A pollutant shall not be disposed of by dumping, depositing or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the executive director. A pollutant whether treated or untreated shall not be discharged into any state-owned natural or artificial lake.

[C66, 71, §455B.28; C73, 75, 77, 79, 81, §455B.48]

Referred to in §455B.187

455B.187 Penalties — burden of proof.

1. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation. The civil penalty shall be an alternative to any criminal penalty provided under part 1 of division III of this chapter.

2. Any person who willfully or negligently discharges any pollutants in violation of section 455B.183 or 455B.186 or in violation of any condition or limitation included in any permit issued under section 455B.183 or in violation of any water quality standard or effluent standard or, with respect to the introduction of pollutants into publicly owned treatment works, violates a pretreatment standard or toxic effluent standard, shall be punished by a fine not to exceed ten thousand dollars for each day of violation. If the conviction is for a violation committed by a person after the person's first conviction under this section, the punishment shall be a fine not to exceed twenty thousand dollars for each day of violation.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

4. The attorney general shall, at the request of the executive director with approval of the commission, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions

of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the executive director or the commission after notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

5. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 45B.182.

6. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.178 shall be raised in the legal proceedings instituted in accordance with this section.

[C66, 71, §455B.23, 455B.25; C73, §455B.43, 455B.45, 455B.49; C75, §455B.43, 455B.49; C77, 79, 81, §455B.49]

Referred to in §238A.4, 455B.175, 455B.178

455B.188 to 455B.210 Reserved.

PART 2

WATER TREATMENT

Sections 455B.50 to 455B.64. Code 1981, renumbered as §455B.211 to 455B.224 in Code 1983

455B.211 Definitions.

When used in this part 2 of division III, unless the context otherwise requires:

1. "Board" means the board of certification.
2. "Certificate" means the certificate of competence issued by the executive director stating that the operator has met the requirements for the specified operator classification of the certification program.
3. "Water supply system" means the system of pipes, structures, and facilities through which a public water supply is obtained, treated and sold or distributed for human consumption or household use.
4. "Water treatment plant" means that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.
5. "Waste water treatment plant" means the facility or group of units used for the treatment of waste water from public sewer systems and for the reduction and handling of solids removed from such wastes.
6. "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.
7. "Operator" means a person who has direct responsibility for the operation of a water treatment plant, water distribution system, or waste water treatment plant.

[C66, 71, §136A.1; C73, 75, 77, 79, 81, §455B.50]

455B.212 Executive director's duties.

The executive director shall classify all water treatment plants, water distribution systems, and waste water treatment plants affecting the public welfare with regard to the size, type, character of water and waste water to be treated and other physical conditions affecting such treatment plants and distribution systems, and according to the skill, knowledge, and experience that an operator must have to supervise the operation of such facilities to protect the public health and prevent pollution.

[C66, 71, §136A.2; C73, 75, 77, 79, 81, §455B.51]

455B.213 Certification of persons.

1. *By director.* The executive director shall certify persons as to their qualifications to supervise the operation of such treatment plants and water distribution systems after considering the recommendations of the board submitted through the commission.

2. *Applications.* Applications for certification shall be on forms prescribed and furnished by the board and shall not contain a recent photograph of the applicant. An applicant shall not be ineligible for certification because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of operation of waterworks or waste waterworks. Character references may be required, but shall not be obtained from certificate holders.

3. *Disclosure of confidential information.* A member of the board shall not disclose information relating to the following:

a. Criminal history or prior misconduct of the applicant.

b. Information relating to the contents of the examination to persons other than members of a board of certification of another state or their employees or an employee of the department.

c. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days.

[C66, 71, §136A.3; C73, 75, 77, 79, 81, §455B.52]

455B.214 Board.

The governor shall appoint, subject to confirmation by the senate, a board of certification consisting of the following seven members:

1. One member who is a waterworks operator holding a valid certificate of the highest classification issued by the department.

2. One member who is a waterworks operator holding a valid certificate and currently working for a water system in a city of three thousand or less population.

3. One member who is a waste waterworks operator holding a valid certificate of the highest classification issued by the department.

4. One member who is a waste waterworks operator holding a valid certificate and currently working for a waste water system in a city of three thousand or less population.

5. One member employed by the department who is qualified in water and waste waterworks operation.

6. One member who is not a certificated waterworks operator or certificated waste waterworks operator, but who shall be interested and knowledgeable in water supply or waste water collection and treatment, and who shall represent the general public.

7. One member who is a director of the board of a rural water district established under chapter 357A or 504A.

The members prescribed in subsections 1 to 5 shall have been engaged in the practice of their professions for five years preceding their appointments, the last two years of which shall have been in Iowa.

Professional associations or societies composed of waterworks operators or waste waterworks operators may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. Members of the board shall not be required to be members of any such associations or societies.

The members of the board shall be appointed for three-year terms beginning and ending as provided by section 69.19. Any vacancy shall be filled by appointment for the unexpired term. Members shall be limited to serving three terms or nine years, whichever is less.

[C66, 71, §136A.4, 136A.5; C73, 75, 77, 79, 81, §455B.53; 82 Acts, ch 1199, §12, 13, 96]

Confirmation, §2.32

Director of board of a rural water district does not become member of certification board until expiration of term of the first of the two members appointed to represent general public; see 82 Acts, ch 1199, §96(7)

455B.215 Organization — compensation and expenses.

The initial board of certification shall organize and elect a chairperson from its membership. Thereafter, a chairperson shall be elected at the last meeting of the fiscal year which shall be the annual meeting of the board. The member of the board employed by the department shall serve as secretary and maintain its records. The cost of such assistance shall be paid by the board to the department from funds appropriated to the board. At least one meeting of the board per year shall be held at the seat of government. Additional meetings may be held at the call of the chairperson. A majority of members shall constitute a quorum. The members of the board shall set their own per diem compensation at a rate not exceeding forty dollars per day and shall be reimbursed for actual and necessary expenses and travel incurred while discharging their official duties. All per diem and expense moneys paid to the members shall be paid from funds appropriated to the board. A member of the board who is employed by this state shall not receive per diem compensation.

[C66, 71, §136A.6-136A.8; C73, 75, 77, 79, 81, §455B.55]

455B.216 Examination.

The board shall hold at least one examination each year for the purpose of examining candidates for certification at a time and place designated by the board.

Any written examination may be given by representatives of the board. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. Those applicants whose competency is acceptable to the board shall be recommended to the executive director for certification. Applicants who fail the examination shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

[C66, 71, §136A.7; C73, 75, 77, 79, 81, §455B.56]

455B.217 Certificate issued.

When the executive director is satisfied that an applicant is qualified by examination or otherwise, and upon recommendation of the board, the executive director shall issue a certificate attesting to the competency of the applicant as an operator. The certificate shall indicate the classification of works which the operator is qualified to supervise.

[C66, 71, §136A.9; C73, 75, 77, 79, 81, §455B.57]

455B.218 Duration.

Certificates shall be for the multiyear period determined by the board unless sooner revoked by the board, but such certificates shall remain the property of the department and the certificate shall so state. The fee for issuance of certificates as determined under section 455B.221 shall be prorated on a quarterly basis for any original certificate issued for a period of less than twelve months. A person who fails to renew a certificate prior to its expiration shall be allowed to do so within thirty days following its expiration, but the executive director may assess a reasonable penalty as established by rule of the commission.

[C66, 71, §136A.10; C73, 75, 77, 79, 81, §455B.58]

455B.219 Revocation or suspension.

The board may suspend or revoke the certificate of an operator, following a hearing before the board, when the operator is found guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the operator's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.

5. Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to operate a water treatment or wastewater treatment plant. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

6. Fraud in representation as to skill or ability.

7. Use of untruthful or improbable statements in advertisements.

8. Willful or repeated violations of division III of this chapter.

[C66, 71, §136A.11; C73, 75, 77, 79, 81, §455B.59]
Referred to in §258A.3, 455B.220

455B.220 Certificate without examination.

1. A certificate in appropriate classification shall be issued without examination to any operator who, prior to January 1, 1973, held a valid certificate attained by examination and issued by the commissioner of public health.

2. A certificate of proper classification shall be issued without examination to any operator who, prior to January 1, 1973, held a valid certificate to operate a particular treatment plant or water distribution system. The certificate so issued shall be valid only for that particular treatment plant or system and shall remain in effect indefinitely unless revoked as provided in section 455B.219.

3. A certificate of proper classification may be issued without examination to operators of a water distribution system in which water is conveyed from a supply point to the premises of consumers without treatment which in some way alters the physical, chemical, or bacteriological quality of the water and which serves a population of not more than two hundred fifty persons. Renewals of those certificates issued shall be governed by the provisions of this part 2 of division III and rules promulgated pursuant to this part. Notwithstanding chapter 258A, continuing education requirements shall not be imposed as a condition of certificate renewal for certificates issued under this subsection.

[C66, 71, §136A.12, 136A.13; C73, 75, 77, 79, 81, §455B.60]

84 Acts, ch 1099, §2

455B.221 Fee.

The executive director, with the approval of the board submitted through the commission, is authorized to charge a fee for certificates issued under the provisions of this part 2 of division III. The fee for the certificates and for renewal shall be based on the costs of administering and enforcing the provisions of part 2 of division III and to pay the expenses of the board. The department shall be reimbursed by the board for all costs incurred. The board shall set a fee for the examination which shall be based upon the annual cost of administering the examinations. All such fees collected shall be remitted to the treasurer of state, who shall deposit the funds in the general fund of the state. Funds shall be appropriated from the general fund to the board.

[C66, 71, §136A.14; C73, 75, 77, 79, 81, §455B.61]
Referred to in §455B.218

455B.222 Rules.

The commission, with the advice of the board, may promulgate such rules as are necessary to carry out the provisions of this part 2 of division III.

[C66, 71, §136A.15; C73, 75, 77, 79, 81, §455B.62]

455B.223 Competent operator required.

It shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency, operating a water treatment plant, water distribution system or wastewater treatment plant to operate same unless the competency of the operator to operate such plant or system is duly certified to by the executive director under the provisions of this part 2 of division III. It shall also be unlawful for any person to perform the duties of an operator, as defined herein, without being duly certified under the provisions of said part.

[C66, 71, §136A.16; C73, 75, 77, 79, 81, §455B.63]

455B.224 Simple misdemeanor.

Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, violating any provisions of this part 2 of division III or the rules adopted thereunder after written notice thereof by the executive director is guilty of a simple misdemeanor. Each day of operation in such violation of said part or any rules adopted thereunder shall constitute a separate offense. It shall be the duty of the appropriate county attorney to secure injunctions of continuing violations of any provisions of said part or the rules adopted thereunder.

[C66, 71, §136A.17; C73, 75, 77, 79, 81, §455B.64]
Referred to in §331.756(67)

455B.225 to 455B.240 Reserved.

PART 3

SEWAGE WORKS CONSTRUCTION

Sections 455B.67 to 455B.72, Code 1981, renumbered as §455B.241 to 455B.246 in Code 1983

455B.241 Fund.

There is established a fund to be known as the "sewage works construction fund". All moneys appropriated to and deposited in the sewage works construction fund are hereby appropriated for and shall be used by the department in carrying out the purposes of this part 3 of division III.

When used in said part, and unless the context requires otherwise:

1. "Treatment works" means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, interceptor sewer, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes, which qualify for federal grants pursuant to the federal Water Pollution Control Act as defined in section 455B.171, or any other federal Act or program.

2. "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement, or extension of treatment works; preliminary planning to determine the economic and engineering feasibility of treatment works; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifica-

tions, procedures, inspection, and supervision, and other action necessary in the construction of treatment works.

3. "Eligible project" means a project for construction of sewage treatment works:

a. For which approval of the executive director is required under this part 3 of division III.

b. Which is, in the judgment of the executive director, eligible for federal pollution abatement assistance, whether or not federal funds are then available for such purpose. Eligible projects shall be those which the construction contract therefor shall have been entered into subsequent to July 1, 1966.

c. Which conforms with applicable rules of the commission.

d. Which is, in the judgment of the executive director, necessary for the accomplishment of the state's policy of water purity.

4. "Municipality" means the city, sanitary district, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of such governmental bodies or corporations acting jointly, in connection with an eligible project.

5. "Federal pollution abatement assistance" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works pursuant to the federal Water Pollution Control Act as defined in section 455B.171.

[C71, §455C.1; C73, 75, 77, 79, 81, §455B.67; 82 Acts, ch 1050, §5]

455B.242 Grants of assistance.

The executive director may make grants as funds are available to any municipality to assist such municipality in the construction of sewage treatment works.

[C71, §455C.2; C73, 75, 77, 79, 81, §455B.68]

455B.243 Acceptance of grants.

The executive director shall accept and administer all funds granted by the state pursuant to this part 3 of division III.

In allocating state grants under said part, the executive director shall give consideration to:

1. The public benefits to be derived by the construction.

2. The ultimate cost of constructing and maintaining the works.

3. The public interest and public necessity for the works.

4. The adequacy of the provisions made or proposed by the municipality for assuring proper and efficient operation and maintenance of the treatment works after the completion of construction thereof.

5. The applicant's readiness to start construction, including financing and planning.

[C71, §455C.3; C73, 75, 77, 79, 81, §455B.69]

455B.244 Contracts.

The executive director may, in the name of the state, contract with any municipality concerning eligible projects, subject to the approval of the commission. The contract may include such provisions as may be agreed upon by the parties, and shall include, in substance, the following provisions:

1. An estimate of the reasonable cost of the project as determined by the executive director.

2. An agreement by the executive director to pay to the municipality, during the progress of construction or following completion of the construction as may be agreed upon by the parties, an amount as determined by appropriation of the general assembly.

3. An agreement by the municipality:

a. To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to this part 3 of division III and pursuant to part 1 of this division III.

b. To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the executive director.

c. To operate and maintain the sewage treatment works in accordance with applicable provisions of part 1 of this division III and rules of the commission.

d. To obtain approval of the executive director before applying for federal assistance for pollution abatement, in order to maximize the amounts of such assistance received or to be received for all projects in Iowa.

e. To provide for the payment by the municipality of its share of the cost of the project.

4. A provision that, if federal assistance which was not included in the calculation of the state payment pursuant to subsection 2 becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of the additional federal assistance and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation.

[C71, §455C.4; C73, 75, 77, 79, 81, §455B.70]

455B.245 Rules.

The commission may adopt such rules as are necessary for the effective administration of this part 3 of this division III.

[C71, §455C.5; C73, 75, 77, 79, 81, §455B.71]

455B.246 Review of contracts by attorney general.

All contracts entered into pursuant to this part 3 of division III shall be subject to approval of the attorney general as to form. All payments by the state pursuant to such contracts shall be made after review and by warrant of the state comptroller to the credit of the municipality and shall be used for the payment of costs of construction of an eligible project. However, if such costs have been paid by the municipality, then such payment may be used by the municipality for:

1. The payment of outstanding bonds or obligations incurred for any such eligible project.

2. Any improvement or extension of an eligible project.

3. Any other lawful municipal purpose determined to be necessary, reasonable, and in the interest of the public welfare.

[C71, §455C.6; C73, 75, 77, 79, 81, §455B.72]

455B.247 to 455B.260 Reserved.

PART 4

WATER ALLOCATION AND USE; FLOOD PLAIN CONTROL

455B.261 Definitions.

As used in this part of division III, unless the context otherwise requires:

1. "Flood plains" means the area adjoining a river or stream which has been or may be covered by flood water.

2. "Floodway" means the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any river or stream.

3. "Surface water" means the water occurring on the surface of the ground.

4. "Ground water" means that water occurring beneath the surface of the ground.

5. "Diffused waters" means waters from precipitation and snowmelt which is not a part of any watercourse or basin including capillary soil water.

6. "Depleting use" means the storage, diversion, conveyance, or other use of a supply of water if the use may impair rights of lower or surrounding users, may impair the natural resources of the state, or may injure the public welfare if not controlled.

7. "Beneficial use" means the application of water to a useful purpose that inures to the benefit of the water user and subject to the user's dominion and control but does not include the waste or pollution of water.

8. "Nonregulated use" means the use of water for ordinary household purposes, use of water for poultry, livestock, and domestic animals, any beneficial use of surface flow from rivers bordering this state, any existing beneficial uses of water within the territorial boundaries of municipal corporations on May 16, 1957, and any other beneficial use of water by any person of less than twenty-five thousand gallons per day. However, industrial users of water, having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when their water use exceeds three percent more than the highest per day beneficial use prior to May 16, 1957.

9. "Regulated use" means any depleting use except a use specifically designated as a nonregulated use.

10. "Permit" means a written authorization issued by the department to a permittee which authorizes diversion, storage, or withdrawal of water limited as to quantity, time, place, and rate in accordance with this part or authorizes construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain in accordance with the principles and policies of protecting life and property from floods as specified in this part.

11. "Permittee" means a person who obtains a permit from the department authorizing the person to take possession by diversion or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for that purpose or a person who obtains a permit from the department authorizing construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain for a designated purpose.

12. "Waste" means any of the following:

a. Permitting ground water or surface water to flow, or taking it or using it in any manner so that it is not put to its full beneficial use.

b. Transporting ground water from its source to its place of use in such a manner that there is an excessive loss in transit.

c. Permitting or causing the pollution of a water-bearing strata through any act which will cause salt water, highly mineralized water, or otherwise contaminated water to enter it.

13. "Watercourse" means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian.

14. "Basin" means a specific subsurface water-bearing reservoir having reasonably ascertainable boundaries.

15. "Established average minimum flow" means the average minimum flow for a given watercourse at a given point determined and established by the commission. The "average minimum flow" for a given watercourse shall be determined by the following factors:

a. Average of minimum daily flows occurring during the preceding years chosen by the commission as more nearly representative of changing conditions and needs of a given drainage area at a particular time.

b. Minimum daily flows shown by experience to be the limit at which further withdrawals would be harmful to the public interest in any particular drainage area.

c. The minimum daily flows shown by established discharge records and experiences to be definitely harmful to the public interest.

The determination shall be based upon available data, supplemented, when available data are incomplete, with whatever evidence is available.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.1; 82 Acts, ch 1199, §15, 96]

83 Acts, ch 137, §7, 8

455B.262 Declaration of policy and planning requirements.

1. It is recognized that the protection of life and property from floods, the prevention of damage to lands from floods, and the orderly development, wise use, protection, and conservation of the water resources of the state by their considered and proper use is of paramount importance to the welfare and prosperity of the people of the state, and to realize these objectives, it is the policy of the state to correlate and vest the powers of the state in a single agency, the department, with the duty and authority to assess the water needs of all water users at five-year intervals for the twenty years beginning January 1, 1985, and ending December 31, 2004, utilizing a data base developed and managed by the Iowa geological survey, and prepare a general plan of water allocation in this state considering the quantity and quality of water resources available in this state designed to meet the specific needs of the water users. The department shall also develop and the commission shall adopt no later than January 1, 1985, a plan for delineation of flood plain and floodway boundaries for selected stream reaches in the various river basins of the state.

Selection of the stream reaches and assignment of priorities for mapping of the selected reaches shall be based on consideration of flooding characteristics, the type and extent of existing and anticipated flood plain development in particular stream reaches, and the needs of local governmental bodies for assistance in delineating flood plain and floodway boundaries. The plan of flood plain mapping shall be for the period from January 1, 1985, to December 31, 2004. After the commission adopts a plan of flood plain mapping, the department shall submit a progress report and proposed implementation schedule to the general assembly biennially. The commission may modify the flood plain mapping plan as needed in response to changing circumstances.

2. The general welfare of the people of the state requires that the water resources of the state be put to beneficial use to the fullest extent possible, and that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation of water resources be encouraged with the view to their reasonable and beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served.

3. Water occurring in a basin or watercourse, or other natural body of water of the state, is public water and public wealth of the people of the state and subject to use in accordance with this chapter, and the control and development and use of water for all beneficial purposes is vested in the state, which shall take measures to encourage full utilization and protection of the water resources of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.2; 82 Acts, ch 1199, §16, 96]

83 Acts, ch 137, §9

455B.263 Duties.

1. a. Not later than January 15, 1985, the commission shall deliver to the secretary of the senate and the chief clerk of the house identical bills embodying a general plan of water allocation priorities for this state, considering the types of water resources available in the state, the principles and policies of beneficial use, and the water needs of all types of water users in this state, with a recommendation on the most effective means of implementation of the plan. It is the intent of this subsection that the general assembly shall bring the bill to a vote in either chamber under a procedure or rule permitting no amendments except those of a purely corrective nature. If by the end of the fourth week of the 1985 regular session, the bill embodying the plan is not approved by a constitutional majority in both chambers, the commission shall, by the end of the sixth week of the 1985 regular session, prepare and deliver to the secretary of the senate and the chief clerk of the house identical bills embodying a second plan, taking into account the reasons cited by either the secretary of the senate or chief clerk of the house for the failure of the first plan.

b. If, proceeding under a procedure or rule permitting amendments in the same manner as other bills, the bill embodying the second plan is not adopted by a constitutional majority in both chambers by the end of the tenth week of the 1985 regular session, the

commission shall, by the end of the eleventh week of the 1985 regular session, prepare and deliver to the secretary of the senate and the chief clerk of the house identical bills embodying a third plan, taking into account the reasons cited by either the secretary of the senate or chief clerk of the house for failure of the second plan. It is the intent of this subsection that the third bill be subject to amendment in the same manner as other bills, and be enacted by the end of the 1985 Session, including any extraordinary sessions of the general assembly.

2. The commission shall designate the official representative of this state on all comprehensive water resources planning groups for which state participation is provided. The commission shall coordinate state planning with local and national planning and, in safeguarding the interests of the state and its people, shall undertake the resolution of any conflicts that may arise between the water resources policies, plans, and projects of the federal government and the water resources policies, plans, and projects of the state, its agencies, and its people. This section does not limit or supplant the functions, duties, and responsibilities of other state or local agencies or institutions with regard to planning of water-associated projects within the particular area of responsibility of those state or local agencies or institutions.

3. The commission shall enter into negotiations and agreements with the federal government relative to the operation of, or the release of water from, any project that has been authorized or constructed by the federal government when the commission deems the negotiations and agreements to be necessary for the achievement of the policies of this state relative to its water resources.

4. The commission, on behalf of the state, shall enter into negotiations with the federal government relative to the inclusion of conservation storage features for water supply in any project that has been authorized by the federal government when the commission deems the negotiations to be necessary for the achievement of the policies of this state, however, an agreement reached pursuant to these negotiations does not bind the state until enacted into law by the general assembly.

5. A water user who benefits from the development by the federal government of conservation storage for water supply shall be encouraged to assume the responsibility for repaying to the federal government any reimbursable costs incurred in the development, and a user who accepts benefits from the developments financed in whole or part by the state shall assume by contract the responsibility of repaying to the state the user's reasonable share of the state's obligations in accordance with a basis which will assure payment within the life of the development. An appropriation, diversion, or use shall not be made by a person of any waters of the state that have been stored or released from storage either under the authority of the state or pursuant to an agreement between the state and the federal government until the person has assumed by contract the person's repayment responsibility. However, this subsection does not infringe upon any vested property interests.

6. In its contracts with water users for the payment of state obligations incurred in the development

of conservation storage for water supply, the commission shall include the terms deemed reasonable and necessary:

a. To protect the health, safety, and general welfare of the people of the state.

b. To achieve the purposes of this chapter.

c. To provide that the state is not responsible to any person if the waters involved are insufficient for performance.

The commission may designate and describe any such contract, and describe the relationships to which it relates, as a sale of storage capacity, a sale of water release services, a contract for the storage or sale of water, or any similar terms suggestive of the creation of a property interest. The term of the contracts shall be commensurate with the investment and use concerned, but the commission shall not enter into any such contract for a term in excess of the maximum period provided for water use permits.

7. The commission shall procure flood control works and water resources projects from or by cooperation with any agency of the United States, by cooperation with the cities and other subdivisions of the state under the laws of the state relating to flood control and use of water resources, and by cooperation with the action of landowners in areas affected by the works or projects when the commission deems the projects to be necessary for the achievement of the policies of this state.

8. The commission shall promote the policies set forth in this part and shall represent this state in all matters within the scope of this part. The commission shall adopt rules pursuant to chapter 17A as necessary to transact its business and for the administration and exercise of its powers and duties.

9. In carrying out its duties, the commission may accept gifts, contributions, donations and grants, and use them for any purpose within the scope of this part.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.3, 455A.8, 455A.15, 455A.17; 82 Acts, ch 1199, §17, 96] 83 Acts, ch 137, §10

Referred to in §455B.266, 455B.280, 467D.16, 467D.17

Contract with federal government for storage in Saylorville Reservoir, 82 Acts, ch 1125, §1, 2

455B.264 Jurisdiction — water and flood plains.

1. The commission has jurisdiction over the public and private waters in the state and the lands adjacent to the waters necessary for the purposes of carrying out this part. The commission may construct flood control works or any part of the works. In the construction of the works, in making surveys and investigations, or in formulating plans and programs relating to the water resources of the state, the commission may cooperate with an agency of another state or the United States, or with any other person.

2. Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use, the executive director shall investigate the effect of the use upon the natural flow of the watercourse, the effect of the use upon the owners of any land which might be affected by the use, and whether the use is consistent with the plan of water allocation priorities for this state.

3. Upon application by any person for approval of the construction or maintenance of any structure, dam, obstruction, deposit, or excavation to be erected, used, or maintained in or on the flood plains of any river or stream, the department shall investigate the effect of the construction or maintenance project on the efficiency and capacity of the floodway. In determining the effect of the proposal the department shall consider fully its effect on flooding of or flood control for any proposed works and adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife, and recreational facilities or uses, and on all other public rights and requirements.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.18; 82 Acts, ch 1199, §18, 96]

83 Acts, ch 137, §11

455B.265 Permits for diversion, storage, and withdrawal.

If the department determines after due investigation that the diversion, storage, or withdrawal of water will not be detrimental to the public interests, including drainage and levee districts, or to the interests of property owners with prior or superior rights who may be affected, the department shall grant a permit for the diversion, storage, or withdrawal. Permits shall be granted for a period of ten years except permits for withdrawal of water which may be granted for less than ten years if geological data on the capacity of the aquifer and the rate of its recharge are indeterminate and permits for the storage of water which may be granted for the life of the structure unless revoked by the commission. All existing storage permits are extended for the life of the structure unless withdrawn for good cause. Permits may be granted which provide for less diversion, storage, or withdrawal of waters than set forth in the application. A permit granted shall remain as an appurtenance of the land described in the permit through the date specified in the permit and any extension of the permit or until an earlier date when the permit or any extension of the permit is canceled under section 455B.271. Upon application for a permit prior to the termination date specified in the permit, a permit may be renewed by the department for a period of ten years.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.20; 82 Acts, ch 1199, §19, 96]

83 Acts, ch 137, §12

Referred to in §455B.271

455B.266 Priority of permits for diversion, storage, and withdrawal.

In the consideration of applications for permits, priority in processing shall be given to persons in the order that the applications are received, except that this processing priority shall not affect the substantive priorities established under the plan of water allocation priorities for this state and except where the application of this priority system prevents the prompt approval of routine applications or where the public health, safety or welfare will be threatened by delay. The executive director or the commission on appeal shall determine the duration and frequency of withdrawal and the quantity of water for which a permit may be granted. Any person with an existing irrigation system in use prior to May 16, 1957, shall be

issued a permit to continue unless its use damages some other riparian user. If there is competition for water, the use of water for irrigation has a lower priority than other beneficial uses of water subject to conditions which the commission may establish by rule. Except as otherwise provided in this section, until the plan of water allocation priorities is enacted as provided in section 455B.263, subsection 1, the principles and policies of beneficial use shall establish the standards for the determination of the disposition of permit applications. After it is enacted as provided in section 455B.263, subsection 1, the plan of water allocation priorities shall establish the standards for determination of the disposition of permit applications. This part does not impair the vested right of any person.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.21; 82 Acts, ch 1199, §20, 96]

83 Acts, ch 137, §13

455B.267 Permits for beneficial use -- prohibitions.

1. The executive director or the commission may issue a permit for beneficial use of water in a watercourse if the established average minimum water flow is preserved.

2. A use of water shall not be authorized if it will impair the effect of this chapter or any other pollution control law of this state.

3. A permit shall not be issued or continued if it will impair the navigability of any navigable watercourse.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.22 - 455A.24; 82 Acts, ch 1199, §21, 96]

455B.268 When permit required.

1. A permit shall be required for the following:

a. A municipal corporation or a person supplying a municipal corporation which increases its water use in excess of one hundred thousand gallons or three percent, whichever is the greater, per day more than its highest per day beneficial use prior to May 16, 1957. The corporation or person shall make reasonable provision for the storage of water at times when the daily use of the water by the corporation or person is less than the amount specified in this subsection.

b. Except for a nonregulated use, a person using in excess of twenty-five thousand gallons of water per day, diverted, stored, or withdrawn from any source of supply except a municipal water system or any other source specifically exempted under this part.

c. A person who diverts water or any material from the surface directly into an underground watercourse or basin.

d. Industrial users of water having their own water supply within the territorial boundaries of municipal corporations when the water use exceeds three percent more than the highest per day beneficial use prior to May 16, 1957.

2. The commission may adopt, modify, or repeal rules pursuant to chapter 17A specifying the conditions under which the executive director may authorize specific nonrecurring minor uses of water for periods not to exceed one year through registration.

3. Notwithstanding any exemptions from permit requirements, nothing in this part exempts water

users from requirements for reporting which the commission adopts by rule.

[C58, 62, 66, 71, 73, 75, 77, §455A.25; C79, 81, §455A.8, 455A.25; 82 Acts, ch 1199, §22, 96]

455B.269 Taking water prohibited.

A person shall not take water from a natural watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use except in compliance with the sections of this part which relate to the withdrawal, diversion, or storage of water. However, existing uses may be continued during the period of the pendency of an application for a permit.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.26; 82 Acts, ch 1199, §23, 96]

83 Acts, ch 137, §14

455B.270 Rights preserved.

The sections of this part which relate to the withdrawal, diversion, or storage of water do not deprive any person of the right to use diffused waters, to drain land by use of tile, open ditch, or surface drainage, or to construct an impoundment on the person's property or across a stream that originates on the person's property if provision is made for safe construction and for a continued established average minimum flow when the flow is required to protect the rights of water users below.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.27; 82 Acts, ch 1199, §24, 96]

83 Acts, ch 137, §15

455B.271 Modification or cancellation of permits.

Each permit issued under section 455B.265 is irrevocable for its term and for any extension of its term except as follows:

1. A permit may be modified or canceled by the department with the consent of the permittee.

2. Subject to appeal to the commission, a permit may be modified or canceled by the executive director if any of the following occur:

- a. There is a breach of the terms of the permit.
- b. There is a violation of the law pertaining to the permit by the permittee or the permittee's agents.
- c. There is a circumstance of nonuse as provided in section 455B.272.

d. The department finds that modification or cancellation is necessary to protect the public health or safety, to protect the public interests in lands or waters, or to prevent substantial injury to persons or property in any manner. Before the modification or cancellation is effective, the department shall give at least thirty days' written notice mailed to the permittee at the permittee's last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard on the proposal.

3. By written order to the permittee, the department may suspend operations under a permit if the executive director finds it necessary in an emergency to protect the public health, to protect the public interest in waters against imminent danger of substantial injury in any manner or to an extent not expressly authorized by the permit, or to protect persons or property against imminent danger. The department

may require the permittee to take measures necessary to prevent or remedy the injury, but an order shall not be in effect for more than thirty days from the date of issue without giving the permittee at least ten days' written notice of the order and an opportunity to be heard on the order.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.28; 82 Acts, ch 1199, §25, 96]

83 Acts, ch 137, §16

Referred to in §455B.265

455B.272 Termination of permit.

The right of the permittee and the permittee's successors to the use of water shall terminate when the permittee or the permittee's successors fail for three consecutive years to use it for the specific beneficial purpose authorized in the permit and, after notification by the department of intent to cancel the permit for nonuse, the permittee or the permittee's successors fail to demonstrate adequate plans to use water within a reasonable time. However, nonuse of water due to adequate rainfall does not constitute grounds for cancellation of a permit to use water for irrigation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.29; 82 Acts, ch 1199, §26, 96]

83 Acts, ch 137, §17

Referred to in §455B.271

455B.273 Disposal of permit.

A permittee may sell, transfer, or assign a permit by conveying, leasing, or otherwise transferring the ownership of the land described in the permit, but the permit does not constitute ownership or absolute rights of use of the waters. The waters remain subject to the principle of beneficial use and the orders of the executive director or commission.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.30; 82 Acts, ch 1199, §27, 96]

455B.274 Unauthorized depleting uses.

If a person files a complaint with the department that another person is making a depleting use of water not expressly exempted as a nonregulated use under this part and without a permit to do so, the department shall cause an investigation to be made and if the facts stated in the complaint are verified the department shall order the discontinuance of the use.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.32; 82 Acts, ch 1199, §28, 96]

455B.275 Prohibited acts — powers of commission and executive director.

1. A person shall not permit, erect, use or maintain a structure, dam, obstruction, deposit, or excavation in or on a floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, or adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, and the same are declared to be public nuisances. However, this subsection does not apply to dams constructed and operated under the authority of chapter 469.

2. The department may commence, maintain, and prosecute any appropriate action to enjoin or abate a nuisance, including any of the nuisances specified in subsection 1 and any other nuisance which adversely affects flood control.

3. If a person desires to erect or make or to permit a structure, dam, obstruction, deposit or excavation, other than a dam constructed and operated under chapter 469, to be erected, made, used, or maintained in or on any floodway or flood plains, the person shall file a verified written application with the department, setting forth information as required by rule of the commission. The department, after an investigation, shall approve or deny the application imposing conditions and terms as prescribed by the department.

4. The department may maintain an action in equity to enjoin a person from erecting or making or permitting to be made a structure, dam, obstruction, deposit, or excavation other than a dam constructed and operated under the authority of chapter 469, for which a permit has not been granted. The department may also seek judicial abatement of any structure, dam, obstruction, deposit, or excavation erected or made without a permit required under this part. The abatement proceeding may be commenced to enforce an administrative determination of the department in a contested case proceeding that a public nuisance exists and should be abated. The costs of abatement shall be borne by the violator. Notwithstanding section 93A.11, a structure, dam, obstruction, deposit, or excavation on a floodway or flood plain in an agricultural area established under chapter 93A is not exempt from the sections of this part which relate to regulation of flood plains and floodways.

5. The department may remove or eliminate a structure, dam, obstruction, deposit, or excavation in a floodway which adversely affects the efficiency of or unduly restricts the capacity of the floodway, by an action in condemnation, and in assessing the damages in the proceeding, the appraisers and the court shall take into consideration whether the structure, dam, obstruction, deposit, or excavation is lawfully in or on the floodway in compliance with this part.

6. The department may require, as a condition of an approval order or permit granted pursuant to this part or chapter 469, the furnishing of a performance bond with good and sufficient surety, conditioned upon full compliance with the order or permit and the rules of the commission. In determining the need for and amount of bond, the department shall give consideration to the hazard posed by the construction and maintenance of the approved works and the protection of the health, safety, and welfare of the people of the state. This subsection does not apply to orders or permits granted to a governmental entity.

7. When approving a request to straighten a stream, the department may establish as a condition of approval a permanent prohibition against tillage of land owned by the person receiving the approval and lying within a minimum distance from the stream sufficient in the judgment of the director or commission to hold soil erosion to reasonable limits. The department shall record the prohibition in the office of the county recorder of the appropriate county and the prohibition shall attach to the land.

8. The commission shall establish, by rule, thresholds for dimensions and effects, and any structure, dam, obstruction, deposit, or excavation having smaller dimensions and effects than those established by the commission is not subject to regulation under this

section. The thresholds shall be established so that only those structures, dams, obstructions, deposits, or excavations posing a significant threat to the well-being of the public and the environment are subject to regulation.

[C50, 54, §455A.19; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.33; 82 Acts, ch 1199, §29, 96]

83 Acts, ch 137, §18

Referred to in §455B.280

455B.276 Flood plains — encroachment limits.

The commission may establish and enforce rules for the orderly development and wise use of the flood plains of any river or stream within the state and alter, change, or revoke the rules. The commission shall determine the characteristics of floods which reasonably may be expected to occur and may establish by order encroachment limits, protection methods, and minimum protection levels appropriate to the flooding characteristics of the stream and to reasonable use of the flood plains. The order shall fix the length of flood plains to be regulated at any practical distance, the width of the zone between the encroachment limits so as to include portions of the flood plains adjoining the channel, which with the channel, are required to carry and discharge the flood waters or flood flow of the river or stream, and the design discharge and water surface elevations for which protection shall be provided for projects outside the encroachment limits but within the limits of inundation. Plans for the protection of projects proposed for areas subject to inundation shall be reviewed as plans for flood control works within the purview of section 455B.277. An order establishing encroachment limits shall not be issued until notice of the proposed order is given and opportunity for public hearing given for the presentation of protests against the order. In establishing the limits, the commission shall avoid to the greatest possible degree the evacuation of persons residing in the area of a floodway, the removal of residential structures occupied by the persons in the area of a floodway, and the removal of structures erected or made prior to July 4, 1965, which are located on the flood plains of a river or stream but not within the area of a floodway.

The commission shall cooperate with and assist local units of government in the establishment of encroachment limits, flood plain regulations, and zoning ordinances relating to flood plain areas within their jurisdiction. Encroachment limits, flood plain regulations, or flood plain zoning ordinances proposed by local units of government shall be submitted to the department for review and approval prior to adoption by the local units of government. Changes or variations from an approved regulation or ordinance as it relates to flood plain use are subject to approval by the commission prior to adoption. Individual applications, plans, and specifications and individual approval orders shall not be required for works on the flood plains constructed in conformity with encroachment limits, flood plain regulations, or zoning ordinances adopted by the local units of government and approved by the commission.

[C50, 54, §455A.21; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.35; 82 Acts, ch 1199, §30, 96]

83 Acts, ch 137, §19

Referred to in §455B.280

455B.277 Flood control works coordinated.

All flood control works in the state, which are established and constructed after April 16, 1949, shall be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout the state. A person shall not construct or install works of any nature for flood control until the proposed works and the plans and specifications for the works are approved by the department. The department shall consider all the pertinent facts relating to the proposed works which will affect flood control and water resources in the state and shall determine whether the proposed works in the plans and specifications will be in aid of and acceptable as part of, or will adversely affect and interfere with flood control in the state, adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, or adversely affect or interfere with an approved local water resources plan. In the event of disapproval, the department shall set forth the objectionable features so that the proposed works and the plans and specifications for the proposed works may be corrected or adjusted to obtain approval.

This section applies to drainage districts, soil conservation districts, the state conservation commission, political subdivisions of the state, and private persons undertaking projects relating to flood control.

[C50, 54, §455A.22; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.36; 82 Acts, ch 1199, §31, 96]

83 Acts, ch 137, §20

Referred to in §455B.276, 455B.280

455B.278 Permit application procedures.

1. The commission shall adopt, modify, or repeal rules establishing procedures by which permits required under this part shall be issued, suspended, revoked, modified, or denied. The rules shall include provisions for application, public notice and opportunity for public hearing, and contested cases. Public notice of a decision by the executive director to issue a permit shall be given in a manner designed to inform persons who may be adversely affected by the permitted project or activity.

2. Action by the department upon an application for a permit required under this part may be appealed to the commission by the applicant or any affected person within thirty days of the department's action. A hearing before the commission or its designee is a contested case. The hearings and judicial review of decisions of the commission shall be carried out in accordance with chapter 17A. Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of Polk county or of any county in which the property affected is located. If the commission, the district court, or the supreme court determines that the action of the commission shall be stayed, the petitioner shall file an appropriate bond approved by the court.

[C50, 54, §455A.23; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.19, 455A.37; 82 Acts, ch 1199, §32, 96]

83 Acts, ch 136, §3; 83 Acts, ch 137, §21

See Code editor's note at the end of Vol III

455B.279 Violation.

1. The commission may issue any order necessary to secure compliance with or prevent a violation of this part or the rules adopted pursuant to this part. The department may request legal services as required from the attorney general, including any legal proceeding necessary to obtain compliance with this part and rules and orders issued under this part.

2. A person who violates a provision of this part or a rule or order adopted or promulgated or the conditions of a permit issued pursuant to this part is subject to a civil penalty not to exceed five hundred dollars for each day that a violation occurs.

[C50, 54, §455A.26; C58, 62, 66, 71, 73, 75, 77, §455A.39; C79, 81, §455A.33(7), 455A.39; 82 Acts, ch 1199, §33, 96]

83 Acts, ch 137, §22

455B.280 Coordination with conservancy districts.

The commission and the boards of the conservancy districts established by chapter 467D shall coordinate their efforts in carrying out the purposes of this chapter and chapter 467D. In addition to other powers and duties conferred by law, the department shall:

1. Offer advice and assistance as appropriate to the boards of the several conservancy districts in the state in discharging their powers and duties.

2. Review and make recommendations as necessary to bring the plan of each of the conservancy districts, and any subsequent changes in the plan, into conformity with the statewide water resources plan established by the commission pursuant to section 455B.263.

3. Inform the board of any conservancy district of any of the following:

a. The receipt of each application for a permit to divert, store, or withdraw either surface or underground waters at any place within the district, filed with the executive director pursuant to this part.

b. The receipt of each application for approval of a proposed dam, obstruction, deposit, or excavation in or on any floodway or flood plain in the district, filed with the executive director pursuant to section 455B.275.

c. Any proposed order which would establish encroachment limits and zoning regulations on any flood plain in the district, filed with the executive director pursuant to section 455B.276.

d. The receipt of each application for approval of a proposed flood control structure or works, filed with the executive director pursuant to section 455B.277.

[C73, 75, 77, 79, 81, §455A.40; 82 Acts, ch 1199, §34, 96]

455B.281 to 455B.300 Reserved.

DIVISION IV

SOLID WASTE DISPOSAL

PART 1

SOLID WASTE

Sections 455B.75 to 455B.80, 455B.82 and 455B.83, Code 1981, renumbered as §455B.301 to 455B.308 in Code 1983

455B.301 Definitions.

As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. "Public agency" means a public agency as defined in section 28E.2.

2. "Private agency" means a private agency as defined in section 28E.2.

3. "Sanitary disposal project" means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.

4. "Solid waste" means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles as defined by section 321.1, subsection 1. Nothing herein shall be construed as prohibiting the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal.

5. "Resource recovery system" means the recovery and separation of ferrous metals and nonferrous metals and glass and aluminum and the preparation and burning of solid waste as fuel for the production of electricity.

[C71, §406.2; C73, 75, 77, 79, 81, §455B.75]

Referred to in §331.441, 331.461

455B.302 Duty of cities and counties.

Every city and county of this state shall provide for the establishment and operation of a sanitary disposal project for final disposal of solid waste by its residents not later than July 1, 1975. Sanitary disposal projects may be established either separately or through cooperative efforts for the joint use of the participating public agencies as provided by law.

Cities and counties may execute with public and private agencies contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law for the collection of solid waste, establishment and operation of sanitary disposal projects, and general administration of the same. Any agreement executed with a private agency for the operation of a sanitary disposal project shall provide for the posting of a sufficient surety bond by the private agency conditioned upon the faithful performance of the agreement.

[C71, §406.3; C73, 75, 77, 79, 81, §455B.76]

Referred to in §331.381

455B.303 Administrator's duties.

The executive director shall administer the provisions of this part 1 of division IV subject to the rules established by the commission.

Local boards of health shall co-operate in the enforcement of the provisions of said part and the executive director may seek their aid and delegate administrative duties of the department to the local boards of health in matters relating to solid waste, refuse disposal plants, and sanitary disposal projects.

The executive director may issue, modify, or deny variances from the rules of the commission. The applicant may appeal the decision of the executive director to the commission.

[C71, §406.4; C73, 75, 77, 79, 81, §455B.77]

455B.304 Rules established.

The commission shall establish rules for the proper administration of the provisions of this part 1 of division IV which shall reflect and accommodate as far as is reasonably possible those current and generally accepted methods and techniques for treatment and disposition of solid waste which will serve the purposes of part 1 of this division which shall take into consideration the factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use, the rules including but not limited to rules relating to the establishment and location of sanitary disposal projects, sanitary practices, inspection of sanitary disposal projects, collection of solid waste, disposal of solid waste, pollution controls, the issuance of permits, approved methods of private disposition of solid waste, the general operation and maintenance of sanitary disposal projects, and the implementation of part 1 of this division. Prior to issuance of rules or amendments thereto, the commission shall hold at least one public hearing on the proposed rules or amendments, and shall give notice of the hearing at least thirty days in advance by publishing notice in a newspaper of general circulation in the state.

The commission shall adopt rules that allow the use of wet or dry sludge from publicly owned treatment works for land application. A sale of wet or dry sludge for the purpose of land application shall be accompanied by a written agreement signed by both parties which contains a general analysis of the contents of the sludge. The heavy metal content of the sludge shall not exceed that allowed by rules of the commission. An owner of a publicly owned treatment works which sells wet or dry sludge is not subject to criminal liability for acts or omissions in connection with a sale, and is not subject to any action by the purchaser to recover damages for harm to person or property caused by sludge that is delivered pursuant to a sale unless it is a result of a violation of the written agreement or if the heavy metal content of the sludge exceeds that allowed by rules of the commission. Nothing in this section shall provide immunity to any person from action by the department pursuant to section 455B.307. The rules promulgated under this paragraph shall be generally consistent with those rules of the department existing on January 1, 1982 regarding the land application of municipal sewage sludge except that they may provide for different methods of application for wet sludge and dry sludge.

[C71, §406.5; C73, 75, 77, 79, 81, §455B.78; 82 Acts, ch 1112, §1, 2]

455B.305 Certification of plans by director.

The executive director shall issue, revoke, suspend, modify, or deny permits for the construction and operation of sanitary disposal projects.

A permit shall be issued by the executive director or at the executive director's direction, by a local

board of health, for each sanitary disposal project operated in this state. The permit shall be issued in the name of the city or county or, where applicable, in the name of the public or private agency operating the project. Each sanitary disposal project shall be inspected annually by the department or a local board of health. The permits issued pursuant to this section shall be in addition to any other licenses, permits or variances authorized or required by law, including, but not limited to, the provisions of chapter 358A. A permit may be suspended or revoked by the executive director if a sanitary disposal project is found not to meet the requirements of part 1 of this division or rules issued under part 1 of this division. The suspension or revocation of a permit may be appealed to the commission.

[C71, §406.6; C73, 75, 77, 79, 81, §455B.79]

83 Acts, ch 136, §4

Referred to in §331.381

455B.306 Plans filed.

Every city, county and every private agency operating or planning to operate a sanitary disposal project shall file with the executive director a plan detailing the method by which the city, county or private agency will comply with the provisions of this part 1 of division IV. The executive director shall review each plan submitted and may reject, suggest modification, or approve the proposed plan. The executive director shall aid in the development of plans for compliance with the provisions of said part. The executive director shall make available to each city, county and private agency appropriate forms for the submission of plans and may hold hearings for the purpose of implementing the provisions of said part. The executive director and governmental agencies with primary responsibility for the development and conservation of energy resources shall provide research and assistance, when cities and counties operating or planning to operate sanitary disposal projects request aid in planning and implementing resource recovery systems.

[C71, §406.7; C73, 75, 77, 79, 81, §455B.80]

Referred to in §331.381

455B.307 Dumping — where prohibited.

1. It shall be unlawful for any private agency or public agency to dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the executive director. This section shall not prohibit a private agency or public agency from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining or commercial activities on land owned or leased by it if the action does not violate any statute of this state or rules promulgated by the commission or local boards of health, or local ordinances. The executive director may issue temporary permits for dumping or disposal of solid waste at disposal sites for which an application for a permit to operate a sanitary disposal project has been made and which have not met all of the requirements of part 1 of this division and the rules adopted by the commission if a compliance schedule has been submitted by the applicant specifying how and when the applicant will meet the requirements for an operational sanitary disposal project and the executive director determines

the public interest will be best served by granting such temporary permit.

2. The executive director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this part 1 of division IV or the rules promulgated pursuant thereto. The attorney general shall, on request of the department, institute any legal proceedings necessary in obtaining compliance with an order of the commission or the executive director or prosecuting any person for a violation of the provisions of said part or rules issued pursuant thereto.

3. Any person who violates any provision of part 1 of this division or any rule or any order promulgated or the conditions of any permit or order issued pursuant to part 1 of this division shall be subject to a civil penalty not to exceed five hundred dollars for each day of such violation.

[C71, §406.9; C73, 75, 77, 79, 81, §455B.82]

Referred to in §455B.304

455B.308 Appeal from order.

Any person aggrieved by an order of the executive director may appeal the order by filing a written notice of appeal with the executive director within thirty days of the issuance of the order. The executive director shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal. The hearing may be held before the commission or its designee. A complete record shall be made of the proceedings. The executive director shall issue the findings in writing to the aggrieved person within thirty days of the conclusion of the hearing. Judicial review may be sought of actions of the commission in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Act, petitions for judicial review may be filed in the district court of the county where the acts in issue occurred.

[C71, §406.10; C73, 75, 77, 79, 81, §455B.83]

455B.309 to 455B.330 Reserved.

PART 2

RADIOACTIVE WASTE

Sections 455B.85 to 455B.94, Code 1981, renumbered as §455B.331 to 455B.340 in Code 1983

455B.331 Definitions.

As used in this part 2 of division IV, unless the context otherwise requires:

1. "Radiation" means any ionizing radiation including, but not limited to, high-speed electrons, neutrons, protons and other nuclear particles, but not sound waves.

2. "Radioactive material" means any solid, liquid, or gaseous material which emits radiation spontaneously.

3. "Nuclear waste disposal site" means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, leased, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of radioactive waste without creating a significant hazard to the

public health or safety, and which are approved by the executive director.

[C73, 75, 77, 79, 81, §455B.85]

455B.332 Policy.

The department shall be the agency of the state to establish policy for the transportation, storage, handling, and disposal of radioactive material for the purpose of protecting the public health and safety.

[C73, 75, 77, 79, 81, §455B.86]

455B.333 Rules for transporting.

The commission shall provide, by rule, for the proper methods of transporting, storage, and handling of radioactive material except that the provisions of this section shall not apply to the transportation, handling, or storage of radioactive material by licensed physicians and surgeons, licensed osteopathic physicians and surgeons, licensed podiatrists, licensed dentists or licensed pharmacists within the scope of their practice or by qualified employees of licensed hospitals within the scope of their duties. In adopting such rules, the commission shall consider the methods and techniques used by the United States nuclear regulatory commission and radiation control agencies of other states for the regulation of the transporting, handling, and storage of radioactive material. The commission shall also consult with the department of public safety in the development of rules for the transporting of radioactive material on the public roads of this state.

[C73, 75, 77, 79, 81, §455B.87]

455B.334 Waste disposal site.

The commission may approve or prohibit the establishment and operation of a nuclear waste disposal site in this state by a private person. In determining whether to grant or deny a permit to establish and operate a nuclear waste disposal site, the commission shall consider the need for a nuclear waste disposal site and the existing physical conditions, topography, soils and geology, climate, transportation, and land use at the proposed site. If the commission decides to issue a permit to establish and operate a nuclear waste disposal site, it shall establish, by rule, standards and procedures for the safe operation and maintenance of the proposed site. The commission shall also require the permittee to provide a sufficient surety bond or other financial commitment to insure the perpetual maintenance and monitoring of the nuclear waste disposal site.

[C73, 75, 77, 79, 81, §455B.88]

83 Acts, ch 136, §5

455B.335 Executive director's duties.

The executive director:

1. Shall enforce any rules adopted under this part 2 of division IV and furnish a copy of the rules to each applicant for a permit required under this part.
2. May issue a permit to any person transporting, handling, or storing any radioactive material under rules adopted by the commission.
3. May require the maintenance of records relating to the receipt, storage, transfer, or disposal of radioactive material.

4. May issue, modify, or revoke orders in accordance with the provisions of this part 2 of division IV or the rules adopted under said part.

5. May require the submission of plans and specifications for the design, construction, maintenance, and monitoring of nuclear waste disposal sites for review and appraisal.

[C73, 75, 77, 79, 81, §455B.89]

83 Acts, ch 136, §6

455B.336 Notice to violators.

If the executive director determines that there are reasonable grounds to believe a violation of this part 2 of division IV or of the rules issued under said part has occurred, the executive director shall give written notice by certified mail to the alleged violator specifying the alleged violations involved and specifying a period of time in which to eliminate the violation. If the alleged violator fails to comply within such specified time, the executive director shall schedule a hearing and give written notice to the alleged violator by certified mail. In connection with the hearings, the executive director may issue subpoenas requiring the attendance of witnesses and the production of records pertinent to such hearing. On the basis of the findings, the executive director shall issue a final order which shall be forwarded to the alleged violator by certified mail.

[C73, 75, 77, 79, 81, §455B.90]

455B.337 Emergency action.

Whenever the executive director finds that an emergency exists requiring immediate action to protect the public health and safety, the executive director may, without notice or hearing, issue an emergency order reciting that an emergency exists and requiring that such action be taken as the executive director deems necessary to meet the emergency. The order may be issued orally to the person whose operation constitutes the emergency by the executive director and confirmed by a copy of such order to be sent by certified mail within twenty-four hours after the issuance of the oral order. The emergency order shall be effective immediately. Any person receiving an emergency order may request a hearing before the commission within thirty days following the receipt of the order. The commission shall schedule a hearing within fourteen days after receipt of the request for a hearing and give written notice to the alleged violator by certified mail. The commission may also schedule a hearing in the absence of a request by the alleged violator. On the basis of the findings, the commission shall issue a final order which shall be forwarded to the alleged violator by certified mail.

The executive director may, if an emergency exists, impound or order the impounding of any radioactive material in the possession of any person who is not equipped to observe, or fails to observe, the provisions of this part 2 of division IV or any rules adopted under said part.

[C73, 75, 77, 79, 81, §455B.91]

455B.338 Judicial review.

Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding

the terms of said Act, a petition for judicial review may be filed in the district court of the county in which the alleged violation was committed or in which a final order was entered.

[C73, 75, 77, 79, 81, §455B.92]

455B.339 Injunction.

Whenever, in the judgment of the executive director, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this part 2 of division IV or any rule or order promulgated under said part, the executive director may request the attorney general to make application in the name of the state to the district court of the county in which such acts or practices may be performed, for an order enjoining such acts or practices notwithstanding the existence or pursuit of any other remedy, and the attorney general shall make such application.

[C73, 75, 77, 79, 81, §455B.93]

455B.340 Penalty.

Any person who violates any provisions of this part 2 of division IV or rules adopted under said part, or any order of the commission or executive director issued pursuant to said part, shall be guilty of a serious misdemeanor and, in addition, the person may be enjoined from continuing such violation. Each day of continued violation after notice that a violation is being committed shall constitute a separate violation.

[C73, 75, 77, 79, 81, §455B.94]

455B.341 to 455B.360 Reserved.

PART 3

DEBRIS

Sections 455B.95 to 455B.98, Code 1981, renumbered as §455B.361 to 455B.364 in Code 1983

455B.361 Definitions.

As used in this part 3 of division IV, unless the context otherwise requires:

1. "Litter" means any garbage, rubbish, trash, refuse, waste materials, or debris.
2. "Discard" means to place, cause to be placed, throw, deposit or drop.

[C73, 75, 77, 79, 81, §455B.95]

455B.362 Executive director's duties.

The executive director, at the direction of the commission, shall establish programs to encourage the active support of business, industry and the general public for litter control.

The executive director, at the direction of the commission, shall co-ordinate and encourage the co-operation of state and local public agencies in the administration of this part 3 of division IV.

[C73, 75, 77, 79, 81, §455B.96]

455B.363 Litter.

No person shall discard any litter onto or in any water or land of this state, except that nothing in this section shall be construed to affect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose.

[C73, 75, 77, 79, 81, §455B.97]

Referred to in §455B.364
See §321.369

455B.364 Penalty.

Any person violating the provisions of section 455B.363, upon conviction, shall be guilty of a simple misdemeanor. The court, in lieu of or in addition to any other sentence imposed, may direct and supervise a labor of litter gathering.

[C73, 75, 77, 79, 81, §455B.98]

455B.365 to 455B.380 Reserved.

PART 4

HAZARDOUS CONDITIONS

Referred to in §455B.423

Sections 455B.119 to 455B.120, Code 1981, renumbered as §455B.381 to 455B.391 in Code 1983

455B.381 Definitions.

As used in this part 4 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 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 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. "Cleanup" means actions necessary to contain, collect, control, identify, analyze, clean up, treat, dispose, remove, or dispose of a hazardous substance.

7. "Cleanup costs" means costs incurred by the state or its political subdivisions or their agents, or by any other person participating with the approval of the executive director in the prevention or mitigation of damages from a hazardous condition or the cleanup

of a hazardous substance involved in a hazardous condition.

8. "Person having control over a hazardous substance" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

9. "Release" means a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying, or dumping of a hazardous substance into or onto the land, air, or waters of the state unless one of the following applies:

a. The release is done in compliance with the conditions of a federal or state permit.

b. The hazardous substance is confined and expected to stay confined to property owned, leased or otherwise controlled by the person having control over the hazardous substance.

c. In the use of pesticides, the application is done in accordance with the product label.

10. "Waters of the state" means rivers, streams, lakes and any other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common. "Waters of the state" includes waters of the United States lying within the state.

[C79, 81, §455B.110]

84 Acts, ch 1108, §1

455B.382 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 part 4 of division IV.

[C79, 81, §455B.111]

455B.383 Powers and duties of commission.

The commission shall:

1. Establish such rules pursuant to the provisions of chapter 17A 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.

[C79, 81, §455B.112]

455B.384 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 part 4 of division IV. Educational programs may be conducted in co-operation with

other public or private agencies through agreements concluded pursuant to chapter 28E.

3. Exercise such other powers consistent with the Code and the provisions of this part 4 as the commission may direct.

[C79, 81, §455B.113]

455B.385 State hazardous condition contingency plan.

All public agencies, as defined in chapter 28E, shall co-operate 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 executive director may enter into agreements, with approval of the commission, 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 co-ordinated with the office of disaster services and any joint county-municipal disaster services and emergency planning administrations established pursuant to chapter 29C.

[C79, 81, §455B.114]

455B.386 Notification of spills — penalty.

A 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. If requested, a person shall submit within thirty days of the department's request a written report of particulars of the incident. A person violating this section is subject to a civil penalty of not more than one thousand dollars.

[C79, 81, §455B.115]

84 Acts, ch 1108, §2

Referred to in §331.653

455B.387 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 a private person or agency for removal of the hazardous substance. In those cases where equipment or services are obtained from a public or private person or agency under emergency conditions, section 455B.105, subsection 7 does not apply.

3. An action taken by a person to abate, control, or clean up a hazardous substance involved in a hazardous condition shall not be construed as an admission of liability for a hazardous condition.

[C79, 81, §455B.116]

83 Acts, ch 101, §94; 84 Acts, ch 1108, §3

455B.388 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 may request that the attorney general institute legal proceedings for a temporary or permanent injunction pursuant to section 455B.391 for purposes of enforcing an emergency order.

[C79, 81, §455B.117]

455B.389 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 17A. Notwithstanding the provisions of chapter 17A, petitions for judicial review may be filed in the district court of the county in which the alleged hazardous condition occurred.

[C79, 81, §455B.118]

455B.390 Jurisdiction limited.

Nothing contained in this part 4 of division IV shall be deemed to grant to the department any authority or jurisdiction under this part 4 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 88 and 91.

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 part 4 of division IV, the department may take any action consistent with this part 4 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 100.

4. The storage, transportation, handling or use of pesticides over which control is exercised by the state secretary of agriculture under chapter 206, 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 200, except when spillage of fertilizers creates a hazardous condition.

[C79, 81, §455B.119]

*Referred to in §101.10

455B.391 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 part 4 of division IV. 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.

[C79, 81, §455B.120]

Referred to in §455B.388

455B.392 Liability for cleanup costs.

1. A person having control over a hazardous substance is strictly liable to the state for all of the following:

a. The reasonable cleanup costs incurred by the state as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

b. The reasonable costs incurred by the state to evacuate people from the area threatened by a hazardous condition caused by the person.

c. The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from a hazardous condition caused by that person including the costs of assessing the injury, destruction, or loss.

If the failure is willful, the person is liable for punitive damages not to exceed triple the cleanup costs incurred by the state. Prompt and good faith notification to the executive director by the person having control over a hazardous substance that the person does not have the resources or managerial capability to begin or continue cleanup, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs. The executive director shall keep a record of all expenses incurred in carrying out a project or activity authorized by this part.

2. Liability under subsection 1 is limited to the following maximum dollar limitations:

a. Five million dollars for any vehicle, boat, aircraft, pipeline, or other manner of conveyance which transports a hazardous substance.

b. Fifty million dollars for any facility generating, storing, or disposing of a hazardous substance.

3. There is no liability under this section for a person otherwise liable if the hazardous condition is solely resulting from one or more of the following:

a. An act of God.

b. An act of war.

c. An act or omission of a third party if the person establishes both of the following:

(1) That taking into consideration the characteristics of the hazardous substance, the person otherwise liable exercised due care with respect to the hazardous substance.

(2) That the person otherwise liable took precautions against the foreseeable acts or omissions of the third party and the foreseeable consequences.

As used in this paragraph, "third party" does not include an employee or agent of the person otherwise

liable or a third party whose act or omission occurs directly or indirectly in connection with a contractual relationship with the person otherwise liable.

4. There is no liability under this section for a person otherwise liable if all of the following conditions exist:

a. The liability arises during the transportation of a hazardous substance.

b. The fact that the hazardous substance is a hazardous substance has been misrepresented to the person transporting the hazardous substance.

c. The person transporting the hazardous substance does not know or have reason to know that the misrepresentation has been made.

5. Money collected pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423 and used in the manner permitted for the fund.

6. This section does not deny any person any legal or equitable rights, remedies or defenses or affect any legal relationship other than the legal relationship between the state and a person having control over a hazardous substance pursuant to subsection 1.

84 Acts, ch 1108, §4

455B.393 Liability of state employees or persons providing assistance.

1. A person employed by the state is not liable for damages incurred as a result of actions taken by the person when acting in the person's official capacity pursuant to this part, rules adopted pursuant to this part and the hazardous condition contingency plan.

2. A person who provides assistance at the request of the department or by previous agreement with the department in the event of a hazardous condition is not liable in a civil action for damages as a result of that person's acts or omissions in rendering the assistance. This section does not relieve a person from civil damages in any of the following circumstances:

a. If the person providing assistance is also the person having control over the hazardous substance which created the hazardous condition.

b. If the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment.

c. For acts or omissions which result from intentional wrongdoing or gross negligence.

84 Acts, ch 1108, §5

455B.394 Right of entry.

A person shall not refuse entry or access to, or harass or obstruct an authorized representative of the department who seeks entry or access for the purpose of investigating or responding to a hazardous condition. The representative shall present appropriate credentials. Upon a showing of probable cause in writing and made under oath, a judge or magistrate having proper jurisdiction shall issue a suitably restricted search warrant to the representative of the department for the purposes of enabling the representative to investigate or respond to a hazardous condition.

84 Acts, ch 1108, §6

455B.395 Public information.

Information obtained under this part or a rule, order or condition adopted or issued under this part,

or an investigation authorized thereby, shall be available to the public unless the information constitutes trade secrets or information which is entitled to confidential treatment in order to protect a plan, process, tool, mechanism, or compound which is known only to the person claiming confidential treatment and confidential treatment is necessary to protect the person's trade, business or manufacturing process.

84 Acts, ch 1108, §7

455B.396 to 455B.398 Reserved.

455B.399 Cleanup assistance — liability.

1. A person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous condition or in preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of a hazardous condition is not liable for damages resulting from the assistance or advice.

2. Subsection 1 does not apply to a person who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering the assistance or advice.

3. This section does not limit the liability of a person for damages resulting from the person's gross negligence or reckless, wanton or intentional misconduct.

84 Acts, ch 1059, §1

455B.400 to 455B.410 Reserved.

PART 5

HAZARDOUS WASTE MANAGEMENT

Sections 455B.130 to 455B.141, Code 1981, renumbered as §455B.411 to 455B.422 in Code 1983

455B.411 Definitions.

As used in this part 5, unless the context otherwise requires:

1. "Abandoned or uncontrolled hazardous waste disposal site" means real property which has been used for the disposal of hazardous waste either illegally or prior to regulation under this chapter.

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 present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. "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) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

4. "Lubricating oil" means the fraction of crude oil or re-refined oil which is sold for purposes of reducing friction in an industrial or mechanical device.

5. "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.

6. "Recycled oil" means used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Recycled oil includes oil which is refined, reclaimed, burned, or reprocessed.

7. "Re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

8. "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.

9. "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.

10. "Used oil" means oil which has been refined from crude oil, has then been used, and as a result of the use, is contaminated by physical or chemical impurities.

[C81, §455B.130; 81 Acts, ch 151, §1]

84 Acts, ch 1108, §8; 84 Acts, ch 1157, §1; 84 Acts, ch 1158, §2

Referred to in §455B.412-455B.420, 455B.442

455B.412 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 July 1, 1979. 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 sections 455B.411 to 455B.421 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 sections 455B.411 to 455B.421. 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 or identified by the commission under subsection 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 455B.415.

5. Notwithstanding section 455B.420, adopt rules regulating the use of recycled oil for the purpose of road oiling, dust control, or weed control necessary to protect public health and the environment. The rules adopted shall be limited to addressing the following:

a. Analysis of oils by those persons supplying the oils prior to their use for road oiling, dust control or weed control. This analysis shall be for polychlorinated biphenyl, flashpoints, and lead.

b. Notification by the person supplying the oils of the results of analysis required to the person to whom the oils are supplied or delivered and the department at the time of delivery or prior to application of oils for road oiling, dust control or weed control.

c. Establishing maximum levels of contaminants allowed in oils used for the purpose of road oiling, dust control or weed control and prohibiting the use of oils containing contaminants in excess of maximum allowable levels for such purposes.

d. Requirements for persons supplying oils for the mitigation and cleanup of contamination posing a threat to public health and the environment resulting from oils applied for road oiling, dust control or weed control.

[C81, §455B.131]

84 Acts, ch 1157, §2; 84 Acts, ch 1158, §3
 Referred to in §307.10, 455B.413-455B.420, 455B.442, 455B.448

455B.413 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 identified by the commission under section 455B.412, subsection 2. Permits shall be issued for a 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 455B.415. 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 sections 455B.411 to 455B.421 and rules adopted and permits and orders issued pursuant to sections 455B.411 to 455B.421. 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.

[C81, §455B.132]

84 Acts, ch 1158, §4

Referred to in §455B.412, 455B.414-455B.420, 455B.442, 455B.451

455B.414 Hazardous waste notification.

1. A person who on the effective date of a rule adopted under section 455B.412, subsection 2 identifying a hazardous waste as subject to sections 455B.411 to 455B.421 is generating or transporting the identified hazardous waste or owns or is operating a treatment, storage or disposal facility handling the identified 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 identifying the waste.

2. Except as provided in subsection 1, a person shall not commence to transport or generate a hazardous waste identified by rule under section 455B.412, subsection 2 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 identified waste.

3. When the commission amends a rule adopted under section 455B.412, subsection 2, identifying additional characteristics of hazardous waste or identifying an additional substance as hazardous waste, the commission may require a person to file the notification required by subsection 1 or 2.

[C81, §455B.133; 81 Acts, ch 151, §2]

84 Acts, ch 1158, §5

Referred to in §455B.412, 455B.413, 455B.415-455B.420

455B.415 Permit required.

1. Except as provided in subsections 2 and 4, a person shall not construct or operate a facility for the treatment, storage or disposal of a hazardous waste identified under section 455B.412, subsection 2 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 identified under section 455B.412, subsection 2 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 identifying the waste and that is required to have a permit under sections 455B.411 to 455B.421 is considered to have a permit until a final administrative determination is made if the person meets the following conditions:

a. The person has given notice as required by section 455B.414.

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 identified under section 455B.412, subsection 2 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 358A.

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.

[C81, §455B.134]

83 Acts, ch 136, §7; 84 Acts, ch 1158, §6

Referred to in §455B.412-455B.414, 455B.416-455B.420, 455B.442, 455B.443, 455B.448, 455B.451

455B.416 Inspections.

1. For purposes of developing a rule, conducting a study of hazardous waste management, compiling a site inventory, or enforcing sections 455B.411 to 455B.421, a person who generates, stores, treats, transports, disposes of or otherwise handles or has

handled hazardous waste shall, upon request of the executive director, furnish information relating to the hazardous waste and 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 sections 455B.411 to 455B.421, the executive director may:

a. Enter at reasonable times an establishment or other place where hazardous waste is or has been 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 executive director obtains a sample, prior to leaving the premises, the executive director 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 part 5.

4. a. If upon receipt of any information, the executive director determines that the presence of a hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or the release of the waste from the facility or site may present a substantial hazard to human health or the environment, the executive director may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the facility or site to determine the nature and extent of the hazard.

b. In the case of a facility or site not in operation at the time a determination is made regarding the facility or site under this subsection, if the executive director finds that the owner of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, the executive director may issue an order requiring the

most recent previous owner or operator of the facility or site who could reasonably be expected to have actual knowledge to carry out the actions referred to in this subsection.

c. An order under this subsection shall require the person to whom the order is issued to submit to the executive director within thirty days from the issuance of the order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The executive director may, after providing the person with an opportunity to confer with the executive director on the proposal, require the person to carry out the monitoring, testing, analysis, and reporting in accordance with the proposal, which may be modified as the executive director deems reasonable to determine the nature and extent of the hazard or to remove the hazard.

d. If the executive director determines that no owner or operator referred to in this subsection is able to conduct monitoring, testing, analysis, or reporting satisfactory to the executive director, if the executive director deems any action carried out by an owner or operator to be unsatisfactory, or if the executive director cannot initially determine that there is an owner or operator referred to in this subsection who is able to conduct monitoring, testing, analysis, or reporting, the executive director may conduct reasonable monitoring, testing, or analysis to determine the nature and extent of the hazard associated with the site. The executive director may require the owner or operator referred to in this subsection to reimburse the executive director or other authority or person for the costs of the monitoring, testing, analysis, or reporting. The executive director shall not order a person to pay the costs of monitoring, testing, analysis, or reporting carried out by the executive director which confirms the results of monitoring, testing, or analysis done pursuant to an earlier order of the executive director.

e. For purposes of carrying out this subsection, the executive director may exercise the powers set forth in subsection 1.

[C81, §455B.135; 81 Acts, ch 151, §3, 4]

Referred to in §455B.412-455B.415, 455B.417-455B.420, 455B.426

455B.417 Prohibited acts — penalties.

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

a. Transport a hazardous waste identified under the commission's rules to a hazardous waste storage, treatment or disposal facility that is located in Iowa and that does not have a permit under section 455B.415, subsection 1.

b. Treat, store, or dispose of a hazardous waste identified under sections 455B.411 to 455B.421 either without having obtained a permit for the treatment, storage, or disposal under section 455B.415, subsection 1, or in violation of a material condition or requirement of a permit.

c. Make a false material 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 sections 455B.411 to 455B.421.

d. Destroy, alter or conceal after July 1, 1981, any record required to be kept under rules adopted by the commission under this part. This paragraph applies to all persons who generated, stored, treated, trans-

ported, disposed of, or otherwise handled hazardous waste after November 19, 1980.

2. A person who violates subsection 1 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 for each day of violation. 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 for each day of violation.

3. A person who violates a provision of this part or a rule, permit, or order adopted or issued under this part is subject to a civil penalty not to exceed ten thousand dollars for each violation. Each day of violation constitutes a separate violation.

[C81, §455B.136; 81 Acts, ch 151, §5-8]

84 Acts, ch 1158, §7, 8

Referred to in §455B.412-455B.416, 455B.418-455B.420

455B.418 Enforcement.

1. If the executive director has substantial evidence that a person has violated or is violating a provision of sections 455B.411 to 455B.421, or of a rule or standard established or permit issued pursuant to sections 455B.411 to 455B.421:

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. The person to whom the order is issued may commence a contested case within the meaning of chapter 17A 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 2 of this section.

2. The attorney general shall, at the request of the executive director pursuant to paragraph "d" of subsection 1 of this section, institute legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of sections 455B.411 to

455B.421 or to obtain compliance with said sections or a rule promulgated or a condition of a permit or order issued under said sections.

3. In a case arising from the violation of an order issued under subsection 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.

[C81, §455B.137; 81 Acts, ch 151, §9-11]

Referred to in §455B.412-455B.417, 455B.419, 455B.420

455B.419 Agricultural chemicals.

1. A farmer using or disposing of federally approved agricultural chemicals or the empty containers of agricultural chemicals is not in violation of sections 455B.411 to 455B.421 by reason of the use or disposal if the farmer does both of the following:

a. Applies or disposes of the chemicals in accordance with the manufacturer's instructions.

b. Triple rinses each chemical container after it has been emptied and uses the rinsing as makeup water in a tankmix and applies the mix to the farmer's cropland at an application rate that does not exceed the manufacturer's instructions.

2. As used in this section, farmer means an owner or tenant of a farm unit, a member of the family of the owner or tenant, or an employee of the owner or tenant. Farmer does not include a commercial applicator of agricultural chemicals.

[C73, 75, 77, §455B.102(2); C79, §455B.132(2); C81, §455B.138]

84 Acts, ch 1158, §9

Referred to in §455B.412-455B.418, 455B.420

455B.420 Rules.

Except as provided in chapter 455D, rules adopted by the commission under sections 455B.411 to 455B.421 shall be consistent with and shall not exceed the requirements of 42 U.S.C. secs. 6921-6934 as amended to January 1, 1981, and rules and regulations adopted pursuant to those sections.

[C81, §455B.139; 81 Acts, ch 151, §12]

84 Acts, ch 1085, §21

Referred to in §455B.412-455B.419

455B.421 Judicial review.

Judicial review of actions of the commission or the executive director may be sought in accordance with the provisions of chapter 17A. Notwithstanding the provisions of chapter 17A, 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.

[C81, §455B.140]

Referred to in §455B.412-455B.420

455B.422 Acquisition and lease of sites.

The commission shall adopt rules establishing criteria for the identification of land areas or sites which are suitable for the operation of a treatment or disposal facility. Upon request, the department shall assist the executive council in locating suitable sites for the location of a treatment or disposal facility. The commission may recommend to the executive council the purchase or condemnation of land to be leased for the operation of a treatment or disposal facility. The executive council may purchase or may condemn the land subject to chapter 471. Consideration for a contract for purchase of land shall not be in excess of funds appropriated by the general assembly for that purpose. The executive council upon recommendation of the commission may lease land purchased under this section to any person except the state or a state agency. This section does not authorize the state to own or operate a hazardous waste treatment or disposal facility for the treatment and disposal of hazardous wastes other than those generated by the state. The terms of the lease shall establish responsibility for long-term monitoring and maintenance of the site. The lessee is subject to all applicable requirements of this part including permit requirements. The commission may require the lessee to post bond conditioned upon performance of conditions of the lease relating to long-term monitoring and maintenance. The leasehold interest including improvements made to the property shall be listed, assessed and valued as any other real property as provided by law.

[C81, §455B.141]

84 Acts, ch 1182, §2

455B.423 Hazardous waste remedial fund.

1. A hazardous waste remedial fund is created within the state treasury. Moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the hazardous waste remedial fund at the end of each fiscal year shall be retained in the fund. However, any unexpended balance shall be transferred to the general fund to replace funds appropriated from the general fund during fiscal year 1985 and fiscal year 1986 for the purposes for which expenditures from the hazardous waste remedial fund are allowed.

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

- a. Administrative services for the identification, assessment and cleanup of abandoned or uncontrolled sites.
- b. Payments to other state agencies for services consistent with the management of abandoned or uncontrolled hazardous waste sites.
- c. Emergency response activities as provided in part 4 of this division.
- d. Financing the nonfederal share of the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.
- e. Financing the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs of abandoned or uncontrolled hazardous waste disposal sites that do not

qualify for federal cost-sharing pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

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

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

3. Neither the state nor its officers, employees or agents are liable for an injury caused by a dangerous condition at an abandoned or uncontrolled site unless the condition is the result of gross negligence on the part of the state, its officers, employees or agents.

4. The executive director may contract with any person to perform the acts authorized in this section.

5. Moneys shall not be used from the fund for abandoned site cleanup unless the executive director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of abandoned or uncontrolled hazardous waste sites or other responsible persons.

6. The executive director shall make all reasonable efforts to recover the full amount of funds expended from the fund through litigation or cooperative agreements with responsible persons. Moneys recovered pursuant to this subsection shall be deposited with the treasurer of state and credited to the hazardous waste remedial fund.

84 Acts, ch 1108, §9

Referred to in §455B.392, 455B.432

455B.424 Hazardous waste fees.

1. The person who generates hazardous waste or the owner or operator of a hazardous waste disposal facility who transports hazardous wastes off of the site where the hazardous waste was generated or off the disposal facility site shall pay a fee of ten dollars for each ton of hazardous waste transported off the site, excluding the water content of any waste that is transported to another facility under the ownership of the generator for the purposes of waste treatment or recycling.

2. A person who generates hazardous waste or owns or operates a facility which treats or disposes of hazardous waste at the facility shall pay the following fees:

a. Forty dollars for each ton of hazardous wastes placed, deposited, dumped or disposed of onto or into the land at a disposal facility in Iowa.

b. Two dollars for each ton of hazardous waste destroyed or treated at the generator's site or at the disposal facility to render the hazardous waste non-hazardous.

3. Fees specified in subsections 1 and 2 shall not be imposed on the state or any of its political subdivisions.

4. Fees specified in subsections 1 and 2 shall not be imposed on any of the following:

a. Hazardous waste that is reclaimed or reused for energy or materials.

b. Hazardous waste that is transformed into new products which are not wastes.

c. Hazardous wastes created or retrieved as a result of remedial actions at an abandoned or uncontrolled hazardous waste site.

d. Influent waste water to a treatment facility which is subject to regulation under either 33 U.S.C. 1317(b) or 33 U.S.C. 1342.

e. A hazardous waste which due to its intrinsic physical, chemical or biological composition degrades, decomposes or changes physical characteristics so as to be rendered or considered nonhazardous without any form of external mechanical, physical or chemical treatment being introduced. However, such change to a nonhazardous nature must occur within twenty-four hours of the generation of the hazardous waste before the exemption granted in this paragraph is applicable.

5. Fees imposed by this section shall be paid to the department on an annual basis. Fees are due on April 15 for the previous calendar year. The payment shall be accompanied by a return in the form prescribed by the department.

6. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section shall be assessed a penalty of fifteen percent of the fee due. The penalty shall be paid in addition to the fee due.

7. Moneys collected or received by the department pursuant to this section shall be transmitted to the treasurer of state for deposit in the hazardous waste remedial fund.

8. The fees imposed by this section shall be suspended if after collection of the fees due from the previous quarter, the hazardous waste remedial fund has a balance in excess of six million dollars. If the balance falls below three million dollars, the fees shall be reimposed commencing the beginning of the next calendar quarter.

84 Acts, ch 1108, §10

Referred to in §455B.432

The fees imposed by subsection 2 begin to accrue July 1, 1985. 84 Acts, ch 1108, §19

455B.425 Annual report on hazardous waste remedial fund.

The executive director shall annually on January 1 give a full accounting of moneys received, moneys expended, sources and recipients, and purposes of the expenditures for the preceding fiscal year in the hazardous waste remedial fund to the general assembly and the governor.

84 Acts, ch 1108, §11

Referred to in §455B.432

455B.426 Registry of abandoned or uncontrolled disposal sites.

1. The executive director shall maintain and make available for public inspection a registry of confirmed abandoned or uncontrolled hazardous waste disposal sites in the state. The executive director shall take all necessary action to ensure that the registry provides a complete listing of all sites. The registry shall contain the exact location of each site and identify the types of waste found at each site.

2. The executive director shall investigate all known or suspected abandoned or uncontrolled sites and determine whether each site should be included in the registry. In the evaluation of known or suspected abandoned or uncontrolled sites, the executive

director may enter private property and perform tests and analyses in the manner provided in section 455B.416.

84 Acts, ch 1108, §12

Referred to in §455B.429, 455B.430, 455B.431, 455B.432

455B.427 Annual report on abandoned or uncontrolled hazardous waste disposal sites.

1. The executive director shall annually on January 1 transmit a report to the general assembly and the governor identifying all abandoned or uncontrolled hazardous waste disposal sites in the state listed on the registry. A copy of the report shall also be sent to the board of supervisors of every county containing a site.

2. The annual report shall include, but is not limited to, the following information for each site:

a. A general description of the site, including the name and address of the site, the type and quantity of the hazardous waste disposed of at the site and the name of the current owners of the site.

b. A summary of significant environmental problems at or near the site.

c. A summary of serious health problems in the immediate vicinity of the site and health problems deemed by the executive director in cooperation with the state department of health to be related to conditions at the site.

d. The status of testing, monitoring or remedial actions in progress or recommended by the executive director.

e. The status of pending legal actions and federal, state or local government permits concerning the site.

f. The relative priority for remedial action at each site.

g. The proximity of the site to private residences, public buildings or property, school facilities, places of work or other areas where individuals may be regularly present.

3. In developing and maintaining the annual report, the executive director shall assess the relative priority of the need for action at each site to remedy environmental and health problems resulting from the presence of hazardous wastes at the sites. In making its assessments of relative priority, the executive director, in cooperation with the state department of health on matters relating to public health, shall place every site in one of the following classifications:

a. Causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment—immediate action required.

b. Significant threat to the environment—action required.

c. Not a significant threat to the public health or environment—action may be deferred.

d. Site properly closed—requires continued management.

e. Site properly closed, no evidence of present or potential adverse impact—no further action required.

4. A site classified as properly closed under subsection 3, paragraph "e", shall be removed from all subsequent annual reports and the register of abandoned or uncontrolled sites.

5. The executive director shall work with the department of health when assessing the effects of an abandoned or uncontrolled site on human health.

84 Acts, ch 1108, §13

Referred to in §455B.431, 455B.432

455B.428 Investigation of sites.

1. The executive director shall investigate each abandoned or uncontrolled hazardous waste disposal site listed in the registry to determine its relative priority.
2. The executive director shall identify each abandoned or uncontrolled site by providing all of the following:
 - a. The address and site boundaries.
 - b. The time period of use for disposal of hazardous waste.
 - c. The name of the current owner and operator and names of reported owners and operators during the time period of use for disposal of hazardous waste.
 - d. The names of persons responsible for the generation and transportation of the hazardous waste disposed of at the site.
 - e. The type, quantity and manner of hazardous waste disposal.
3. When preliminary evidence suggests further assessment is necessary, the executive director may assess any of the following:
 - a. The depth of the water table at the site.
 - b. The nature of soils at the site.
 - c. The location, nature and size of aquifers at the site.
 - d. The direction of present and historic groundwater flows at the site.
 - e. The location and nature of surface waters at and near the site.
 - f. The levels of contaminants in groundwater, surface water, air and soils at and near the site resulting from hazardous wastes disposed of at the site.
 - g. The current quality of all drinking water drawn from or distributed through the area in which the site is located if the executive director determines that water quality may have been affected by the site.
4. The executive director shall maintain a site assessment file for each site listed in the registry. The file shall contain all information obtained pursuant to this section and shall be open to the public. Information in the file may be reproduced by any person at a charge not to exceed the actual cost of reproduction for copies of file information.

84 Acts, ch 1108, §14

Referred to in §455B.432

455B.429 Notification to owners — appeals.

1. Within sixty days after July 1, 1984, the executive director shall notify the owner of any part of a site to be included in the registry required by section 455B.426. The notice shall be sent by certified mail to the owner's last known address. Thirty days before a site is added to the registry, the executive director shall notify the owner of any part of the site by certified mail of the proposed addition to the registry. The notice shall be sent by certified mail to the owner's last known address.
2. An owner or operator of a site proposed for listing in the registry or listed in the registry pursuant to section 455B.426, may petition the executive director for deletion of the site, modification of the site classification, or modification of any information regarding the site. A site shall not be listed on the registry until

a final determination has been made on any appeal initiated under this section. An appeal is a contested case for the purposes of chapter 17A.

3. Within ninety days after the submission of an appeal, the department shall conduct a hearing to review the determination. At least thirty days prior to the hearing the department shall publish a notice of hearing in a newspaper of general circulation in the county in which the site is located. The department shall also notify in writing the owner or operator of the site at least thirty days prior to the hearing.

4. At least thirty days following the hearing, the department shall provide the owner or operator with a written determination accompanied by reasons for the determination on the appeal.

5. Within ten days of a determination, the executive director shall notify the local governments with jurisdiction over the site whenever a change is made in the registry pursuant to this section.

84 Acts, ch 1108, §15

Referred to in §455B.430, 455B.432

455B.430 Use and transfer of sites — penalty.

1. A person shall not substantially change the manner in which an abandoned or uncontrolled hazardous waste disposal site on the registry pursuant to section 455B.426 is used without the written approval of the executive director.

2. A person shall not sell, convey or transfer title to an abandoned or uncontrolled hazardous waste disposal site which is on the registry pursuant to section 455B.426 without the written approval of the executive director. The executive director shall respond to a request for a change of ownership within thirty days of its receipt.

3. Decisions of the executive director concerning the use or transfer of an abandoned or uncontrolled hazardous waste site may be appealed in the manner provided in section 455B.429.

4. If the executive director has reason to believe this section has been violated, or is in imminent danger of being violated, the executive director may institute a civil action in district court for injunctive relief to prevent the violation and for the assessment of a civil penalty not to exceed one thousand dollars per day for each day of violation. Moneys collected under this subsection shall be deposited in the hazardous waste remedial fund.

84 Acts, ch 1108, §16

Referred to in §455B.432

455B.431 Recording of site designation.

When the executive director places a site on the registry as provided in section 455B.426, then the executive director shall file with the county recorder a statement disclosing the period during which the site was used as a hazardous waste disposal area. When the executive director finds that a site on the registry has been properly closed under section 455B.427, subsection 3, paragraph "e", with no evidence of potential adverse impact, this finding shall be filed with the county recorder. The finding shall state that the executive director's finding does not warrant to a future purchaser of the site that the site will be free from any future adverse impacts as a result of use of the site as a hazardous waste disposal site.

84 Acts, ch 1108, §17

Referred to in §455B.432

455B.432 Liability.

Acts or omissions of the executive director or the department in carrying out the duties imposed by sections 455B.423 through 455B.431 shall not be cause for a claim against the state within the meaning of chapter 25A.

84 Acts, ch 1108, §18

455B.433 to 455B.440 Reserved.

PART 6

HAZARDOUS WASTE MANAGEMENT METHODS

455B.441 Purpose and guidelines.

The purpose of this part is to protect the public health and the environment by providing a procedure for establishing appropriate sites and properly designed facilities for the treatment, storage and disposal of hazardous waste. It is the intent of the general assembly that in the implementation of this part the department of water, air and waste management shall emphasize alternatives to land burial of hazardous waste whenever possible with emphasis on the following management methods in the following order: Source reduction, reuse, resource recovery, incineration, and detoxification.

[81 Acts, ch 152, §1]

83 Acts, ch 101, §95; 83 Acts, ch 137, §23

455B.442 Definitions.

As used in this part 6 of division IV unless the context otherwise requires:

1. a. "Facility" means land and structures, other appurtenances, and improvements on the land used for the treatment, storage, or disposal of a hazardous waste required to have a permit under section 455B.415.

b. "Facility" does not include land, structures, other appurtenances and improvements contiguous to the source of generation and owned and operated by and exclusively for the treatment, storage, or disposal of hazardous waste of the generator.

c. As used in this subsection property is contiguous if it is divided only by a public or private way.

2. "Hazardous waste" means a hazardous waste as defined in section 455B.411, subsection 3 and listed under section 455B.412, subsection 2.

3. "Regulatory agency" means a state or local agency that issues a license or permit required for the construction, operation, or maintenance of a facility pursuant to state statute or rule or local ordinance or resolution in effect on the date the application for a site license is submitted to the commission.

4. "Construct" means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility. "Construct" includes alteration to existing structures or a land disposal facility to initially accommodate hazardous waste but does not include any alteration to increase the capacity or change the ability to accommodate hazardous waste. However,

any alteration to increase or change the ability to accommodate hazardous waste is subject to section 455B.413.

[81 Acts, ch 152, §2]

83 Acts, ch 101, §96, 97

455B.443 License required.

1. A person shall not construct a facility until the person obtains a site license issued under this part 6 of division IV by the commission. A person planning to construct a facility shall give notice of the intent to construct the facility as provided in this section. The notice shall be served on the executive director and on the city council and board of supervisors of each city and county in which the facility is located and shall be published in a newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks. The notice shall contain the following:

a. A description of the proposed location of the facility.

b. A description of the treatment, storage, or disposal method to be used and the types of wastes to be handled, including estimated volumes.

c. The names and addresses of the owners and the operators of the facility.

2. Within fifteen days of the date the notice is last published, the owners and operators of the facility shall submit an application to the executive director requesting that a site license be issued under this part 6 of division IV. The application for a site license shall contain the name and residence of the applicant, and the following additional information:

a. The location of the proposed facility and a plat of the proposed location.

b. A description of the design and capacity of the proposed facility.

c. The expected sources of hazardous wastes for the facility, the proposed methods and routes of transporting the wastes to and from the facility.

d. The qualifications of the operator.

e. Other relevant information as the commission requires by rule.

The application shall be accompanied by a non-refundable application fee determined by a schedule established by the commission by rule, but which shall not exceed one thousand dollars.

3. Within thirty days of the receipt of the application, the executive director shall determine whether the application is in substantial compliance with the information requirements, and shall either accept the application or notify the applicant of any deficiencies. An applicant who receives notification of deficiencies in the application has ninety days from the receipt of notice to remedy the deficiencies and resubmit the application for consideration. The executive director shall notify the applicant within thirty days of receipt of a resubmitted application whether the application is accepted. An application rejected under this subsection may be resubmitted only once. If a resubmitted application is rejected the applicant may reapply for a license by giving notice and resubmitting an application as provided in subsections 1 and 2, including payment of the nonrefundable application fee.

4. This part 6 of division IV does not apply to a facility that is subject to section 455B.415, subsection

2, and that has obtained applicable local zoning permits and for which contracts have been signed prior to January 1, 1982.

[81 Acts, ch 152, §3]

Referred to in §455B.445

455B.444 Temporary members appointed.

Immediately upon receipt of an application for a site license the executive director shall notify the city council of the city closest to the proposed facility and the county board of supervisors of the county in which the facility is proposed to be located that the application has been received. Within thirty days of the receipt of notification the city council or the county board of supervisors may make the following appointments to the commission for purposes of consideration of the site license application and if the city council or the county board of supervisors chooses to make the temporary appointments the executive director shall be notified of the names of those persons appointed as follows:

1. The county board may appoint two temporary members who are residents of the county.

2. The city council may appoint two temporary members who are residents of the city.

Temporary members who may be appointed under this section shall serve on the commission only during discussion and proceedings relating to the application for a site license which the temporary members were appointed to consider and shall vote only on questions relating to the issuance of that site license. Temporary members shall serve on the commission until final action is taken on the application for the site license which the temporary members were appointed to consider. Temporary members who are not public employees shall receive forty dollars per diem and actual and necessary expenses incurred in performance of their official duties. Temporary employees who are public employees shall receive reimbursement for expenses only. Per diem and expenses under this section shall be paid by the state.

[81 Acts, ch 152, §4]

455B.445 Notification requirements.

Upon acceptance of a site license application under section 455B.443 the executive director shall mail copies of the application to regulatory agencies. A regulatory agency receiving a copy of the application shall conduct a preliminary review of the contents and shall evaluate the application for completeness and for compliance with the regulatory agency's permit or licensing requirements.

[81 Acts, ch 152, §5]

455B.446 Proceeding.

1. Within thirty days after the acceptance of the application for a site license, the commission shall establish a timetable for consideration of the application. The timetable for final action by the commission shall not exceed one hundred eighty days after the date the application is accepted.

2. The proceeding for the issuance of a site license is a contested case under chapter 17A.

3. The commission shall establish a date for the hearing on the application and shall serve notice of the hearing on interested agencies, as determined by the commission, and regulatory agencies.

The commission shall notify all owners of record of real property located within one mile from the boundaries of the proposed site of the time and place of the hearing.

4. Notice of the hearing in the form provided in section 17A.12, subsection 2, shall be published in a newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing.

[81 Acts, ch 152, §6]

455B.447 Proceeding — role of regulatory agencies.

1. Regulatory agencies that appear on record at the proceeding shall state whether the application meets their permit or licensing requirements. If the application does not meet the requirements of a regulatory agency, the regulatory agency shall state why the application is not in compliance.

2. Any person may present oral or written comments to the commission at the hearing.

[81 Acts, ch 152, §7]

455B.448 Decision by commission.

1. The commission shall grant or deny the site license. In making its decision, the commission shall consider the following:

a. The need for the services to be offered by the facility.

b. The impact of the proposed facility on the area in which it is to be located.

c. The zoning classification of the proposed site and the extent to which a proposed site is by present or projected use dedicated to industrial development.

d. The land uses and the density of population in areas near the facility.

e. The density of population in areas adjacent to probable transportation routes to the facility.

f. The risk and effect of accidents during the transportation of hazardous wastes to the site.

g. The geology of the site, where relevant, with reference to factors which include, but are not limited to, the presence of fault zones and the risk of contamination of ground and surface waters by leaching and runoff from the facility.

h. The risk and effect of fires or explosions from improper storage and disposal methods.

i. The impact of the facility on the operations and responsibilities of the city and county in which the facility is proposed to be located and on cities and counties near the proposed site.

j. Local ordinances, permits, or other requirements and their relationship to the proposed facility.

k. Other criteria adopted by rule which the commission finds relevant to the siting of a facility which are consistent with this part 6 of division IV.

2. The commission shall grant the license if it finds that the facility will meet the requirements imposed by rules adopted by the commission under section 455B.412, subsection 3, and the permit requirement of section 455B.415, that operation of the facility at the proposed location will be in the public interest and that the public health and welfare and the environment will be adequately protected. The

failure of the proposed facility to meet zoning requirements established under chapters 329, 358A, and 414, and the licensing requirements of regulatory agencies except the requirements imposed by sections 455B.412, subsection 3 and 455B.415 shall not preclude the commission from issuing the license and to that extent this subsection supersedes the licensing requirements of regulatory agencies and the requirements of chapters 329, 358A and 414.

3. A municipality as defined in section 613A.1, subsection 1, is not liable in an action for damages arising out of the construction, operation, or maintenance of a hazardous waste facility which is licensed by the commission under this part 6 of division IV unless the municipality is responsible for or in control of the facility. However, a municipality may be subject to liability for damages caused by hazardous waste in connection with an act or omission which would otherwise subject the municipality to liability. A municipality shall not be required to pay any portion of the costs associated with the response to a release or threatened release of a hazardous waste from a facility into the land, air, or water that threatens or may threaten human health or the environment unless the municipality is responsible for or in control of the facility or unless the municipality is otherwise subject to liability under this subsection.

[81 Acts, ch 152, §8]

455B.449 Issuance of license — effect.

Issuance of a license by the commission authorizes construction of the facility on the site designated in the license according to the terms and conditions stated in the license. A license may be transferred, subject to the rules and approval of the commission, to a person who agrees and is able to comply with the terms of the license.

[81 Acts, ch 152, §9]

455B.450 Cost of proceedings.

The cost of the proceeding for the issuance of a license shall be paid by the applicant for the license until the cost exceeds nine thousand dollars. The executive director shall notify the applicant upon the issuance or denial of the license or upon termination of the proceeding at any point during the process of the cost of the proceeding to the applicant. These costs include the costs of providing notices, holding the hearing and the per diem of the commissioners in the proceeding for the license. Moneys collected shall be deposited in the general fund of the state.

[81 Acts, ch 152, §10]

455B.451 Further approvals prohibited — exception.

Upon the issuance of a license under this part 6 of division IV, notwithstanding any provision of law or ordinance except statutory requirements relating to the protection of employees engaged in the construction of the facility, no further approval, permit, or license for the construction, operation, or maintenance of the facility as stated in the license shall be required. The commission may incorporate in the license the licensing requirements of a regulatory agency to the extent that those requirements are consistent with the construction and operation of the

facility according to the requirements of the commission. However, this section does not limit the authority of the executive director under sections 455B.413 and 455B.415. A local unit of government shall not unduly restrict the transportation of hazardous waste to a facility for which a license has been issued under this part 6 of division IV.

[81 Acts, ch 152, §11]

455B.452 Single hearing — judicial review.

Notwithstanding chapter 17A:

1. Any proceeding or oral presentation held before the commission on an application for a license shall be held in lieu of any other proceeding or oral presentation required for a license or permit necessary for the construction, maintenance, or operation of a facility.

2. The issuance or denial of the license is a final agency action, and the date for determining whether any person is aggrieved or adversely affected by the action is the date of the issuance or denial of the license.

[81 Acts, ch 152, §12]

455B.453 Rules.

The commission shall adopt rules under chapter 17A necessary to implement this part 6 of division IV including but not limited to the form for an application for a license and the description of information to be furnished by the applicant.

[81 Acts, ch 152, §13]

455B.454 Penalties.

A person required to obtain a site license under this part 6 of division IV who constructs a facility without having first obtained the license is subject to a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the general fund of the state.

[81 Acts, ch 152, §14]

455B.455 Surcharge imposed.

A land burial surcharge tax of two percent is imposed on the fee for land burial of a hazardous waste. The owner of the land burial facility shall remit the tax collected to the director of revenue after consultation with the executive director according to rules that the director shall adopt. The executive director shall forward a copy of the site license to the director of revenue which shall be the appropriate license for the collection of the land burial surcharge tax and shall be subject to suspension or revocation if the site license holder fails to collect or remit the tax collected under this section. The provisions of sections 422.25, subsection 4, 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and 422.70 to 422.75, consistent with the provisions of this part 6 of division IV, shall apply with respect to the taxes authorized under this part, in the same manner and with the same effect as if the land burial surcharge tax were retail sales taxes within the meaning of those statutes. Notwithstanding the provisions of this paragraph, the director shall provide for only quarterly filing of returns as prescribed in section 422.51. Taxes collected by the director of revenue under this section shall be deposited in the general fund of the state.

[81 Acts, ch 152, §15]

455B.456 to 455B.470 Reserved.

DIVISION V
CHEMICAL TECHNOLOGY

Section 455B.150, Code 1981, renumbered as §455B.471 in Code 1983

455B.471 Restrictions on use of agricultural chemicals.

1. If the commission determines that an agricultural chemical causes an unreasonable, adverse effect on humans or the environment, the commission shall submit to the secretary of agriculture its findings and recommended actions. The secretary of agriculture shall propose rules implementing the recommended actions and shall hold a public hearing to determine the effects of the proposed rules as provided in chapter 206 after review and consideration of the findings as provided in subsection 2 of this section. A rule of the secretary shall be adopted pursuant to chapter 17A.

2. The commission shall submit to the secretary of agriculture its findings on the unreasonable, adverse effect that the agricultural chemical causes to humans or the environment. The department of agriculture

shall prepare an estimate of the economic impact of restricting the use of the agricultural chemical. The economic impact statement, the commission's findings and the report of the advisory committee created under section 206.23 shall be available at the time of publication of the intended rule action by the secretary. The secretary of agriculture and the advisory committee shall review the commission's findings and collect, analyze and interpret any other scientific data relating to the agricultural chemical. The secretary and the committee shall consider any official reports, academic studies, expert opinions or testimony, or other matters deemed to have probative value and shall consider the toxicity, hazard, effectiveness, public need for the agricultural chemical or other means of control other than the chemical in question, and the economic impact on the members of the public and agencies affected by it.

3. As used in this section, "agricultural chemical" means a pesticide as defined in section 206.2 and also means any feed or soil additive, other than a pesticide, which is designed for and used to promote the growth of plants or animals.

[C71, §206A.2; C73, 75, 77, §455B.100; C79, §455B.130, 455B.131; C81, §455B.150]

Referred to in §206.2

CHAPTER 455C

BEVERAGE CONTAINERS DEPOSIT

- 455C.1 Definitions.
- 455C.2 Refund values.
- 455C.3 Payment of refund value.
- 455C.4 Refusal to accept containers.
- 455C.5 Refund value stated on container.
- 455C.6 Redemption centers.
- 455C.7 Unapproved redemption centers.
- 455C.8 Snap-top cans prohibited.

- 455C.9 Rules adopted.
- 455C.10 Appeal.
- 455C.11 Annual appropriation.
- 455C.12 Penalties.
- 455C.13 Distributors' agreements authorized.
- 455C.14 Redemption of refused nonrefillable metal beverage containers.

455C.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Beverage" means alcoholic liquor as defined in section 123.3, subsection 8, beer as defined in section 123.3, subsection 9, mineral water, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

2. "Beverage container" means any sealed glass, plastic, or metal bottle, can, jar or carton containing a beverage.

3. "Consumer" means any person who purchases a beverage in a beverage container for use or consumption.

4. "Dealer" means any person who engages in the sale of beverages in beverage containers to a consumer.

5. "Distributor" means any person who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer who engages in such sales.

6. "Manufacturer" means any person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers.

7. "Director" means the executive director of the department of water, air and waste management.

8. "Department" means the department of water, air and waste management.

9. "Commission" means the water, air and waste management commission of the department of water, air and waste management.

10. "Nonrefillable beverage container" means a beverage container not intended to be refilled for sale by a manufacturer.

[C79, 81, §455C.1; 82 Acts, ch 1199, §71, 96]

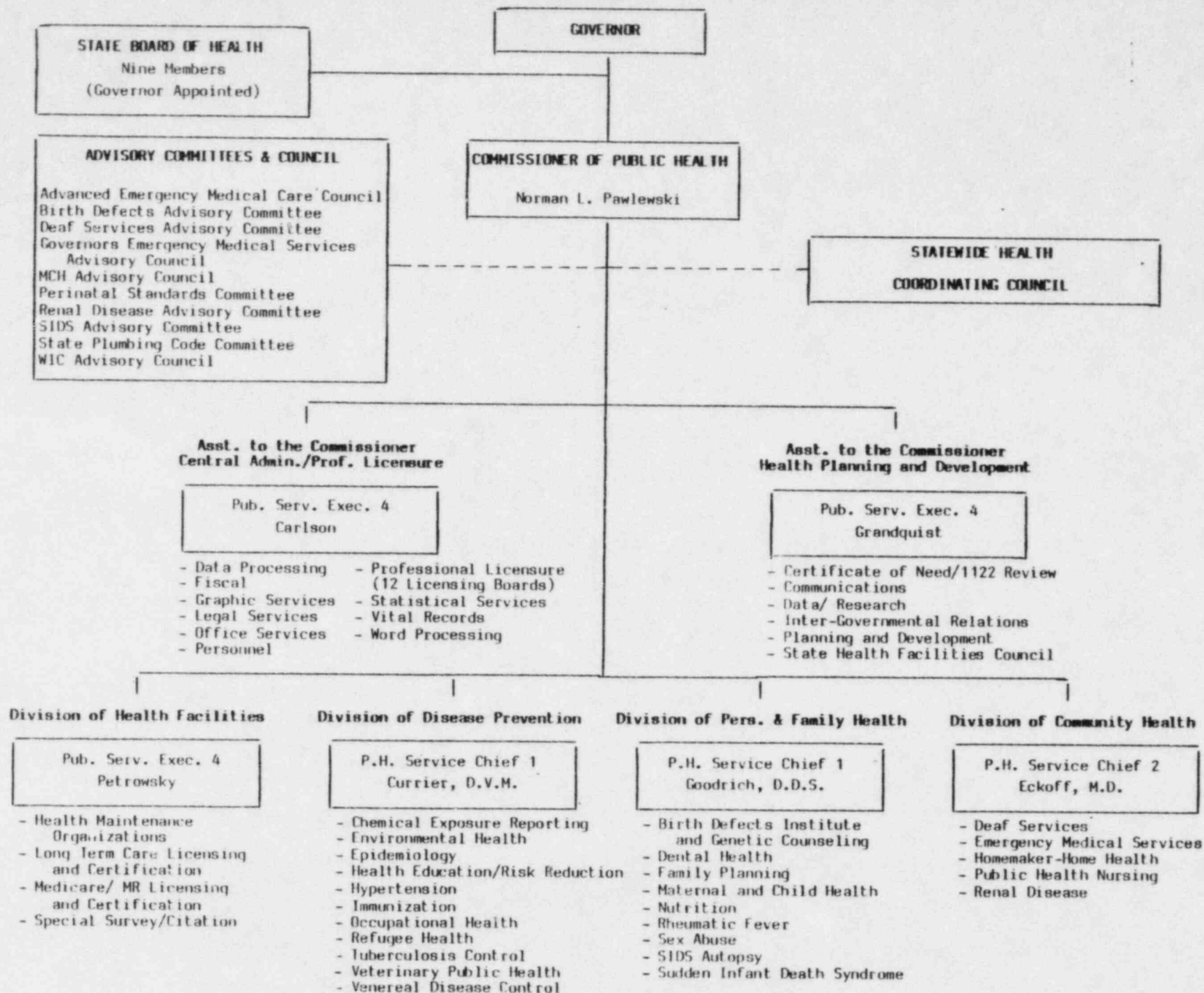
Appendix II

Organizational Charts

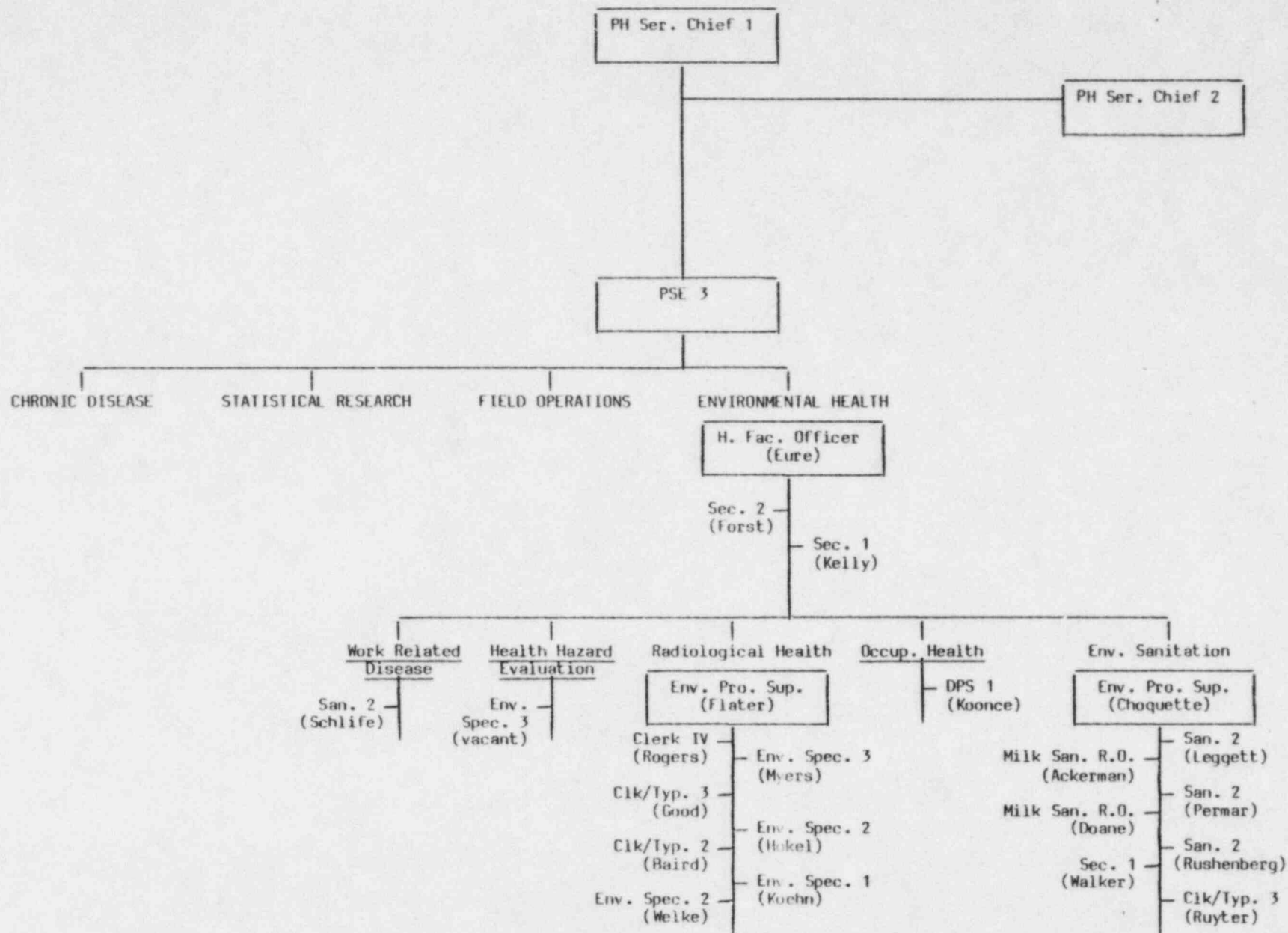
- A. Iowa State Department of Health
- B. Division of Disease Prevention - Environmental Health Section - Radiological Health Program

NOTE: A professional position and secretarial position will be added to the Environmental Health Section when the positions have been approved.

IOWA STATE DEPARTMENT OF HEALTH



IOWA STATE DEPARTMENT OF HEALTH
DIVISION OF DISEASE PREVENTION



Appendix III

Ad Hoc Committee on Rules for
Radiation Emitting Equipment

**AD HOC COMMITTEE ON RULES
FOR RADIATION EMITTING EQUIPMENT**

Charles J. Bischof, Ph.D.
Radiation Oncology, P.C.
1440 Pleasant Street
Suite 119
Des Moines, Iowa 50314
AMERICAN ASSOC. OF PHYSICISTS IN MED.
(515) 283-5864

Ms. Jeanne Boesen
3815 48th Place
Des Moines, Iowa 50310
LEAGUE OF WOMEN VOTERS
(515) 276-3197
(515) 279-9711

Ms. Joyce Brandt
N. 487 Lindquist Center
Iowa City, Iowa 52242
DEPARTMENT OF PUBLIC INSTRUCTION
(319) 353-3536

Ms. Carol Brobst, CDA
Hawkeye Institute of Technology
Waterloo, Iowa 50701
IOWA DENTAL ASSISTANTS' ASSOCIATION
(319) 296-2320

Robin R. Canterbury, D.C.
Department of Roentgenology
Palmer College of Chiropractic
1000 Brady Street
Davenport, Iowa 52803
IOWA CHIROPRACTIC SOCIETY
(319) 326-9600

John A. Eure, Chairman
Director, Environmental Health Section
Lucas State Office Building
Des Moines, Iowa 50319
IOWA STATE DEPARTMENT OF HEALTH
(515) 281-4928

David Foy, D.O.
Department of Radiology
Des Moines General Hospital
603 E. 12th
Des Moines, Iowa 50316
IOWA SOCIETY OF OSTEOPATHIC
PHYSICIANS AND SURGEONS
(515) 263-4260

Roger C. Splinter, Ph.D.
Associate Director
University Hygienic Laboratory
Iowa City, Iowa 52242
UNIVERSITY HYGIENIC LABORATORY
(319) 353-5990

Marilyn Holland, R.T.R., Director
Radiologic Technology Education
Radiology Department
University of Iowa Hospitals
and Clinics
Iowa City, Iowa 52252
IOWA SOCIETY OF RADIOLOGIC
TECHNOLOGISTS
(319) 356-4332

Eugene E. Houk, D.D.S.
207 W. State Street
Jefferson, Iowa 50129
IOWA BOARD OF DENTAL EXAMINERS
(515) 386-4128

Ms. Jeanine Freeman
Staff Legal Counsel
Suite R
600 Fifth Avenue
Des Moines, Iowa 50309
THE IOWA HOSPITAL ASSOCIATION
(515) 283-9319

Dennis Jurgens, CRT
300 Hutchings
Winterset, Iowa 50273
AMERICAN REGISTRY OF CLINICAL
RADIOGRAPHY TECHNOLOGISTS
(515) 462-1261

Francis Keith, D.D.S.
2601 East 14th Street
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IOWA DENTAL ASSOCIATION
(515) 265-3796

Sandra McNeel, D.V.M.
Department of Radiology
College of Veterinary Medicine
Iowa State University
Ames, Iowa 50010
IOWA VETERINARY MEDICAL ASSOCIATION
(515) 294-4900

J. P. McPartland
Environmental Coordinator
P.O. Box 351
Cedar Rapids, Iowa 52406
IOWA ELECTRIC LIGHT AND POWER CO.
(319) 398-4180

Michael G. Miller, D.P.M.
515 28th Street
Des Moines, Iowa 50312
IOWA PODIATRY SOCIETY
(515) 282-6067

Michael Myszewski, Ph.D.
Olin Hall, Drake University
27th & Forest
Des Moines, Iowa 50311
CITIZENS UNITED FOR RESPONSIBLE
ENERGY ORGANIZATION (CURE)
(515) 271-3765

Stan Gerdes
111 Sidehill Drive
Waterloo, Iowa 50701
PICKER CORPORATION
(515) 265-6031 or
(319) 233-9352

Milo Voss
Ames Laboratory
Iowa State University
Ames, Iowa 50010
ENERGY & MINERAL RESOURCES
RESEARCHES INSTITUTE
(515) 294-2500, 2153

Donald C. Young, M.D.
Breast Cancer Detection Center
Mid-Iowa X-Ray & Nuclear Medicine
1301 Pennsylvania Avenue
Des Moines, Iowa 50316
IOWA MEDICAL SOCIETY
(515) 263-8014

Mr. Gary Wilcox
Chamberlain Manufacturing Corporation
P.O. Box 2545
Waterloo, Iowa 50704
IOWA ASSOCIATION OF BUSINESS AND INDUSTRY
(319) 291-1666

Appendix IV

- A. Radiation Control Personnel Chart
- B. Radiation Control Personnel Resumes

ENVIRONMENTAL HEALTH SECTION - RADIOLOGICAL HEALTH PROGRAM

Appendix IV,A

NAME	PROFESSIONAL STAFF	DUTY ASSIGNMENT
John A. Eure	Director, Environmental Health Section	Overall administration and supervision of the Environmental Health Section
Donald A. Flater	Coordinator, Radiological Health Program	Administration and supervision of the Radiological Health Program with guidance from Director of Environmental Health Section
David Russell Myers	Environmental Specialist III	Supervises field inspectional staff and conducts inspections of complicated radiation machines and NARM product use facilities. Is being trained to do radioactive material inspections.
Bruce W. Hokel*	Environmental Specialist II	Currently inspects radiation machines and NARM product use facilities. This individual is being seriously considered to fill the new position as lead person for the radioactive material licensure and inspection unit of the RHP.
Richard L. Welke	Environmental Specialist II	Inspects radiation machines and NARM product use facilities. Is being trained to do radioactive inspections.
Paul E. Koehn	Environmental Specialist I	In training. In first year will become proficient in inspection of radiation machines. Will be trained after first year to conduct radioactive material inspections.

*NOTE: One new professional position will be added to the Environmental Health Section. The individual who occupies the position will have prime responsibility in the licensing of facilities to use radioactive materials. If Mr. Hokel fills the position, we will be allowed to hire a new Environmental Specialist I.

Appendix IV,B

Radiation Control Personnel Resumes

CURRICULA VITAE

John A. Eure

Following receipt of a Bachelor of Science in Sanitary Engineering from the University of Illinois in February, 1957, he has been actively engaged as an Environmental Health Engineer in the field of public health. His experience has been primarily in the areas of radiological health and water supply and pollution control from a technical, administrative and supervisory aspect.

While an undergraduate he worked as a draftsman with the Northern Illinois Water Corporation in Champaign-Urbana, Illinois, and for a sanitary engineering consulting firm, Greeley and Hanson in Chicago, Illinois. Immediately after graduation he was employed by the City of Chicago's Office of Water Safety Control. He was employed there for four months and was engaged in the laboratory evaluation and quality control of the city's water supply.

In June of 1957, he was assigned to the Kansas City, Missouri, regional office in the waste treatment plant construction grants program. Here his major function was the engineering evaluation of waste water treatment facilities for which Federal grants had been requested. His activities in Kansas City also included participation in regulatory enforcement of the Federal Water Pollution Control Act.

In July, 1960, he was accepted into the Regular Corps of the U.S. Public Health Service and was reassigned to the University of Texas for graduate training in Sanitary Engineering. In September of 1961, he received a Master of Science Degree in Sanitary Engineering with a minor in Bacteriology. His thesis was entitled, "Bone Seeking Radionuclides in Food" and involved a public health assessment of Radium and Strontium 90 in the diet (See references 1 and 2).

On completion of his graduate studies he was assigned to the Occupational Health Division of the Texas State Department of Health as a resident in radiological health. During this assignment he was engaged in the full spectrum of radiological health program activities. He was placed in primary charge of the environmental surveillance activities. During his two and one-half year assignment, he completed the following tasks: developed a program to monitor refueling activities of the nuclear ship Savannah in Galveston, Texas, (see reference 3); developed a radioactivity analysis laboratory for the health department, this involved writing specifications and evaluation of equipment offered on bids; developed an automatic data processing system for all radioisotope licenses; and conducted numerous environmental surveys and radioisotope and x-ray inspections (see references 4 and 5).

In March, 1964, he was assigned to the New York City Office of Radiation Control. Here his activities included: developing an inspection procedures manual for x-ray facilities; developing and coordinating a surveillance program and an emergency plan for visits by the nuclear ship Savannah to the port of New York; developing an automatic data processing system for New York City x-ray inspections; and designing a system to categorize and label x-ray radiographic cones (see reference 6).

In July, 1965, he was appointed Assistant Regional Program Director for Radiological Health in the USPHS New York City Regional Office. His principal responsibilities were to provide for and manage technical and administrative assistance to state radiation protection programs and to evaluate program effectiveness for State program grants. His duties included such activities as development of reactor emergency plans, training of x-ray technicians in radiation safety, evaluation of radioactive waste disposal (see reference 7). He also served as Secretary for the Regional Conference for Radiological Health which involved the managing of quarterly meetings of state, local and Federal government representatives engaged in radiation protection work in a ten-state area. This regional conference has now expanded into a national organization of State and City radiation control program directors.

A number of potentially hazardous situations were also investigated during this assignment including lost radioactivity sources, sale of radium pills for internal use and a high energy accelerator accident involving excessive exposure to employees. During the course of another occupational health investigation it was determined that television receivers intended for household use were emitting high levels of x-radiation. This finding and subsequent investigational efforts identified the need for Federal control of Electronic Products and resulted in Congressional enactment of the Radiation Control for Health and Safety Act of 1968 - P L - 90-602.

In July, 1968, he was assigned to the Bureau of Radiological Health headquarters in Rockville, Maryland. Here he was engaged in emergency planning activities and developed a model plan which has served as a guide for the development of many state emergency plans (see reference 8). He was also engaged in the development of national surveillance networks relating to nuclear facilities and evaluation of radioactive waste disposal at the national reactor test site in Idaho Falls and other radioactivity contamination situations.

In July, 1970, he was reassigned to the Division of Electronic Products within the Bureau of Radiological Health where he was primarily engaged in regulatory activities associated with the Radiation Control for Health and Safety Act, in successively more responsible positions. As Deputy Chief of the Intelligence Branch, he developed field surveillance data which was instrumental in bringing about the Performance Standard for Microwave Ovens. During this assignment he was responsibly engaged in assessing occupational exposure from electronic products, including a joint investigation with the National Institute of Occupational Safety and Health involving a safety evaluation of industrial microwave power devices (see reference 9-13). Further, as Industry Service Officer within the Compliance Branch, he developed the first routine plant compliance inspection program employed by the Bureau. This program involved regulation of microwave oven safety and has served as a model for other products (e.g., television receivers, diagnostic x-ray lasers, etc.).

His activities as chief of the Compliance Operations Branch included the management of a national program of surveillance of electronic products for which there are applicable standards. This involved coordinating the activities of ten regional offices, 22 districts, one laboratory in electronic products regulatory activities and an expenditure of about 70 man years of field effort. In addition, he was responsible for the development and evaluation of all guidance for these field activities. His responsibilities also included managing a program of enforcing the correction of all electronic products found to be non-compliant or

defective under the Radiation Control for Health and Safety Act or the Food, Drug and Cosmetic Act as it applies to radiation emitting and associated devices or appurtenances. This activity included communicating with manufacturers and eliciting their correction of violations and when necessary managing the development of injunctions and other regulatory actions.

He was instrumentally and responsibly involved in the development, promulgation and implementation of the regulatory enforcement policies and activities associated with violative products under the jurisdiction of the Bureau of Radiological Health.

In July, 1979, he retired from the USPHS, and was appointed as the Director of Radiological Health at the Iowa State Department of Health. Here he established a comprehensive program in Radiological Health which is now fully operational. In October, 1981, he was appointed as Director of Environmental Health within this Department and assumed the responsibility of administering programs in public health engineering including sanitation, consumer safety and work related disease in addition to radiation protection. He is currently engaged in expanding the work related disease functions of his Section.

PROFESSIONAL CERTIFICATION:

Licensed Professional Engineer-Texas
Diplomate American Academy of Environmental Engineers
Fellow American Public Health Association

NAME: John A. Eure

CATEGORY: Sanitary Engineer

DATE OF BIRTH: October 1, 1934

PLACE OF BIRTH: Coello, Illinois

MARITAL STATUS: Married: Wife - Norma Ann
Children: (4) John, Joan, Ann and Paul

EDUCATION:

<u>FROM</u>	<u>TO</u>	<u>UNIVERSITY</u>	<u>TYPE</u>	<u>MAJOR</u>
9/52	2/57	University of Illinois	B.S.	Sanitary Engineer
9/60	8/61	University of Texas	M.S.	Sanitary Engineer

SHORT TERM COURSES:

Sanitary Engineering Aspects of Water Supply and Water Pollution Control

Basic Radiological Health

Engineering Aspects of Radiological Health (10 weeks)

Reactor Safety and Hazards Evaluation

Management of Radiation Accidents

Radium Hazards and Control

Basics of Public Health Practice (10-day PHS sponsored course at University of North Carolina)

Short Course in Laser Theory, Measurement and Application as Pertaining to Radiation Hazards (5-day PHS sponsored course at Georgia Institute of Technology)

Three-week AEC Radioactive Materials Licensing Course

Ordinary Differential Equations - National Institutes of Health (3-hour credit graduate course)

Equal Employment Opportunity Awareness Training Course (3 days EEO)

Understanding and Managing Human Behavior (3-day course USCSC)

Training Course in Food and Drug Law (2 hr/week, one semester course through George Washington University)

Dickerson FDA Law Training Session (5-day course FDA sponsored)

Civil Service Commission Course on Leadership - 1978

Radiological Emergency Response Operations Course, National Test Site, Nevada
1/29-2/8 1980 (Department of Energy)

Radiological Accident Assessment Course sponsored by FEMA August 1981 (5 days)

Radiation Therapy Topical Workshop sponsored by BRH, FDA, October 1981 (1 day)

Occupational Medicine Epidemiology Course sponsored by NIOSH, November 1981 (5 days)

Occupational Safety Course sponsored by NIOSH, April 1982 (3 days)

Principals of Epidemiology Take Home Course, December 1983 (33 hours)

PREVIOUS WORK EXPERIENCE:

As an Undergraduate Student: Map Draftsman, Northern Illinois Water Corps (1 year)
Draftsman, Greeley & Hanson Engineers (3 months)

Following receipt of Bachelor's Degree: Sanitary Engineer I, Water Safety Control
City of Chicago (4 months)

PHS ASSIGNMENTS:

<u>FROM</u>	<u>TO</u>	<u>BRANCH AND DIVISION</u>	<u>SUPERVISOR</u>	<u>NATURE OF DUTIES</u>
6/57	5/58	Water Supply and Pollution Control Program, DSES	Mr. Paul Reed Mr. Ralph Holtje	Technical review of water projects and programs
5/58	7/60	Construction Grants Program Division of W.S. & P.C.	Mr. Daniel Weiner	Engineering evaluation of waste disposal facilities
7/60	9/61	Training Branch, DRH	Dr. Ernest Gloyne	Graduate Student University of Texas
9/61	3/64	Texas State Dept. of Health SAB, DRH	Mr. Martin Wukasch	State Assignment as Radiological Health Resident responsible technical staff work in all areas of Radiologi- cal Health
3/64	7/65	N.Y.C. Office of Radia- tion Control, SAB, DRH	Mr. Hanson Blatz	State Assignee respon- sible technical staff work in all areas of radiological health
7/65	7/68	N.Y.C. Regional Office NCRH	Mr. Saul Harris	Assistant Regional Representative for Radiological Health

7/68	7/69	Environmental Surveillance Control Program NCRH, Rockville, MD	Mr. Ronald Bales	Development of State Emergency Plans
7/69	1/70	Nuclear Facilities Branch DER, BRH, Rockville, MD	Mr. E. David Harward	Chief, Protective Action Planning Sect.
1/70	7/70	Radiation Surveillance Branch DER, BRH, Rockville, MD	Dr. Robertson Augustine	Chief, Environmental Radioactivity Section
7/70	7/71	IB, DEP, BRH, Rockville, MD	Mr. LaVert C. Seabron	Deputy Chief Intelligence Branch
7/71	12/71	CB, DEP, BRH	Mr. Robert G. Britain	Industry Services Officer, Compliance Br.
1/72	5/73	BC, DEP, BRH	Mr. Walter E. Gundaker	Chief, Compliance Operations Section Compliance Branch
5/73	7/79	BRH, FDA	Mr. Robert G. Britain	Chief, Compliance Operations Branch Division of Compliance
7/79	Present	Disease Prevention Division Iowa State Department of Health	Mr. Jack Kelly	Director, Environmental Health Section

BIBLIOGRAPHY:

- (1) "Environmental Radioactivity - 2 - Food" Technical Report to the U.S. Public Health Service, July 31, 1961, The University of Texas Environmental Health Engineering Laboratories. Ernest F. Gloyna and John A. Eure.
- (2) "Ibid - 3 Summary", March 30, 1962, Ernest F. Gloyna, John A. Eure, et.al
- (3) "The Galveston Environmental Surveillance Program - One Year of Operation - Interim Report," June 1953, Division of Occupational Health and Radiation Control, Texas State Department of Health. John A. Eure and Martin C. Wukasch
- (4) "Transient Rise of Fallout Activity in Texas (Nov.-Dec. 1962)" June 1953, Division of Occupational Health and Radiation Control, Texas Department of Health. John A. Eure and Martin C. Wukasch
- (5) "Radiological Monitoring of the Marine Environment - A Survey of State Activities," Report to Joint Committee on Marine Food Sanitation (Conference of State Sanitary Engineers - American Public Health Association), June 1963, Division of Occupational Health and Radiation Control, Texas State Department of Health. John A. Eure and Charles R. Barden
- (6) "New York City Radiographic Cone Labels," Health Physics Journal (Journal Publications and Books Notes) November 1966, p. 1630; Hanson Blatz and John A. Eure

- (7) "Public Health Implications of Radioactive Debris Burial at Croton Point" (New York), January 1967, U.S. Department of Health, Education and Welfare, Public Health Service, National Center for Radiological Health; John A. Eure and G.D. Schmidt
- (8) "Emergency Planning by Public Health Agencies in the United States," presented at the Seminar on Agricultural and Public Health Aspects of Environmental Contamination by Radioactive Materials, International Atomic Energy Association, Vienna, Austria, March 24-29, 1969, Charles L. Seaver, John A. Eure, and James E. Martin, Ph.D.
- (9) "Radiation Leakage Control of Industrial Microwave Power Devices," presented at the International Microwave Power Institute Symposium, Monterey, California, May 25, 1971, Robert L. Elder, Sc.D.; John A. Eure and James W. Nicholls
- (10) "Safety Evaluation of Industrial Microwave Power Devices" for presentation at 15th Annual Western Industrial Hygiene Conference, San Francisco, California, October 1-2, 1971; John A. Eure, James W. Nicholls, and Robert L. Elder, Sc.D.
- (11) "Radiation Exposure from Industrial Microwave Application," American Journal of Public Health, December 1972, Vol. 62, No. 12, p. 1573; John A. Eure, M.S., James W. Nicholls, M.S., and Robert L. Elder, Sc.D.
- (12) "Protection for Industrial Radiation Equipment Users," National Safety News, December 1972, Vol. 106, p. 105; John A. Eure and Robert L. Elder, Sc.D.
- (13) "Radiation Leakage of Industrial Microwave Power Devices," Journal of Microwave Power, June 1974, 9(2); R. L. Elder, Sc.D. John A. Eure and J.W. Nicholls
- (14) "Iowa State Department of Health: A New Department Underway," Medical Imaging Administrator - The Journal of Radiology Administration and Management, March 1982, p. 22; John A. Eure
- (15) "A Study of Formaldehyde Exposure of Iowa Funeral Directors," June 1983, Division of Disease Prevention, Iowa State Department of Health; John A. Eure, et.al

RESUME

NAME: Donald A. Flater, B.S., RT(R)

R.R. #2, Box 196A

Adel, Iowa 50003

Phone: 515/834-2847 (home) 515/281-3478 (office)

DATE OF BIRTH: March 18, 1941

MARITAL STATUS: Married, two sons

EDUCATION

1. Kentucky State University, Frankfort, KY
Nine Semester Hours, Masters of Public Affairs 8/79
2. George Washington University, Washington, D.C.
Bachelor of Science in Radiologic Sciences and Administration 2/78
3. Radiologic Technology Training
University of Iowa (8/64-8/66)
4. Physical Therapy School, USN (1/61-6/61)
5. Hospital Corps School, USN (12/59-3/60)
6. Charles City Community High School, Charles City, Iowa

SPECIAL EDUCATION (CERTIFICATE)

1. Transportation of Radioactive Materials November 1984
U.S. Nuclear Regulatory Commission
2. Advanced Medical Imaging Technology Workshop September 1984
Conference of Radiation Control Program Directors, Inc.
3. Inspection Procedures July 1984
U.S. Nuclear Regulatory Commission
4. Principles of Epidemiology March 1984
Centers for Disease Control
5. Applied Epidemiology February 1984
Centers for Disease Control and Iowa State Department of Health
6. Orientation Course In Licensing Practices and Procedures For
State Regulatory Personnel September 1983
U.S. Nuclear Regulatory Commission
7. Radiological Defense Officer Course
June 1983 Iowa Office of Disaster Services
8. Radiological Monitoring Home Study Course
May 1983 Federal Emergency Management Agency
9. Medical Use of Radionuclides
April 1983 U.S. Nuclear Regulatory Commission
10. Radiological Emergency Planning Course
March 1981 Federal Emergency Management Agency
11. Radiological Emergency Response Operations for
Radiological Emergency Response Teams
January 1981 U.S. Nuclear Regulatory Commission
12. Dose Projection Accident Assessment and Protective
Action Decision Making for Radiological Emergency Response
March 1980 U.S. Nuclear Regulatory Commission

PUBLICATION

"Putting NEXT to work in Kentucky"-- presentation at Sixth Annual National Conference on Radiation Control.

SPECIAL AWARDS

1. "Letter of Appreciation" from Parkland College, Champaign, Illinois for assisting in the establishment of the College's Radiologic Technology Training Program.
2. Food and Drug Administration "Commendable Service Award" as a member of the Allied Health Staff for outstanding work in improving the education, qualifications and competence of Radiologic Technologists, accomplished with limited resources and without regulatory authority.
3. Food and Drug Administration "Commendable Service Award" as a member of the Breese Exposure: Nationwide Trends (BENT) Staff for outstanding accomplishment in establishing a national program to reduce the radiation exposure of women during mammographic x-ray examinations.

PROFESSIONAL AFFILIATIONS

- | | |
|---|-----------|
| 1. American Registry of Radiologic Technologists | 1966- |
| 2. American Society of Radiologic Technologists | 1972- |
| 3. Illinois State Society of Radiologic Technologists | 1967-1972 |
| 4. Massachusetts Society of Radiologic Technologists | 1972-1973 |
| 5. Kentucky Society of Radiologic Technologists | 1974-1975 |

EMPLOYMENT

Present: Iowa State Department of Health
Division of Disease Prevention
Environmental Health Section
Radiological Health Program
Lucas State Office Building
Des Moines, Iowa 50319

From: April 1983 to present

Title: Environmental Section Supervisor

Duties: Under the administrative guidance of the Section Director, I am responsible for the day-to-day operations of the Radiological Health Program. This responsibility includes supervision of field staff, review and submission of compliance letters, correspondence with the general public regarding radiological matters, response to radioactive transportation accidents, nuclear power plant drills, etc., presentation to professional and public groups on radiation related subjects and participation on State and Federal committees regarding the use of radiation in Iowa.

Develop and draft regulations used to meet the program goals. A portion of my time is also spent developing and providing for the implementation of a data collection system for sources of ionizing radiation.

Past: Iowa State Department of Health
Division of Disease Prevention
Radiological Health and Work Related Disease Section
Lucas State Office Building
Des Moines, Iowa 50319

From: September 1980 to April 1983

Title: Environmental Specialist III

Duties: Under the administrative guidance of the Section Director, I was responsible for giving technical advice, support to and supervision of the field personnel in carrying out an active field radiation inspection program. I also was responsible for coordinating activities regarding the establishment of educational standards for operators of sources of ionizing radiation other than licensed practitioners of the healing arts.

Assist with the development and drafting of regulations used to meet program goals. Also met and interacted with professional society members in an effort to bring about judicious and expedient program implementation.

A portion of my time also was spent in developing and providing for the implementation of a data collection system for sources of ionizing radiation.

Past: Department of Health, Education and Welfare
Public Health Service
Food and Drug Administration
Bureau of Radiological Health

From: April 1972 to April 1978

Title: Public Health Advisor

Duties: During my employment with the Federal government I have had a variety of duties; therefore, I will treat each of my assignments separately.

1972-1973

Northeastern Radiological Health Laboratory, Winchester Massachusetts. I was the field coordinator for a national program known as the "Nation wide Evaluation of X-Ray Trends." This program was a data collection system, carried on through a joint Federal/State cooperative effort, to identify x-ray trends nationwide. My duties were to coordinate the submission of data plus trouble-shoot in an attempt to assure that all data was collected in the same manner by all surveyors. Also, I was responsible for the purchasing of x-ray equipment and accessories utilized during research projects carried on at the Laboratory.

1974-1975

DHEW State Assignee to the Bureau of Health Services, State of Kentucky. Based on a request from the State of Kentucky, I was sent

there for two years to develop the Radiation Operators' Certification Programs. In cooperation with State personnel, rules and regulations were written and the administrative tools developed for the program. Legislative action is in process to totally implement the program.

1976 Assigned to the home office of the Food and Drug Administration's Bureau of Radiological Health, Rockville, Maryland. I was involved as a consultant to Federal and State agencies regarding licensure of Allied Health Personnel. Also, assisted in the development of national recommendations for qualifications of radiation operators. Secondly, I was contract officer for a State data collection effort plus assisted in the development of educational programs for radiologic technologists.

October 1976 Assigned to the Training and Quality Assurance Branch of the Division of Training and Medical Applications, BRH, FDA, and responsible for the research and development of a quality assurance program for Xerox radio graphy equipment. I was responsible for coordinating a nationwide mammography quality assurance program in 8 to 12 states. This entailed interpretation and collection of data, training of state surveyors, compilation of reports, and the establishment of programs to reduce unnecessary exposure where possible.

As a secondary part of my duties I spent time developing Quality Assurance procedures for the Xerox Medical 125 Processing System. Also, was responsible for equipping and supervision of construction of a new Quality Assurance darkroom to be used as a research facility for developing nationwide diagnostic radiology Quality Assurance programs. This facility cost from \$20,000 to \$30,000.

Past: State of Illinois, Department of Public Health

From: August 1966 to April 1972

Reason
for

Leaving: Advancement

Title: Radiation Detection Supervisor

Duties: Department of Health Regional Radiological Health Representative for 18 counties. The duties were to be familiar with all types of radiation producing sources and to be sure that those sources used in my area of responsibility met State regulations. I routinely conducted radiological health surveys of hospitals and other medical facilities, plus surveyed industrial facilities, dental offices, veterinary offices, podiatry offices, chiropractic offices and educational institutions. I was responsible for the administration of the radiological health program in my area, which included the surveys mentioned above plus the maintenance of my equipment and the necessary administrative functions which are a part of such a program. As a secondary part of my duties, was called upon to consult with persons regarding radiation accidents and taught courses in radiological health.

MILITARY SERVICE

Branch of Service: United States Navy

Date Entered: August 1959

Date Left Service: May 1963

Date of Final Honorable Discharge: August 1965

Highest Rank Held: Hospital Man Third Class

Duties: During the first two years, the major duties were as a ward corpsman, responsible for dispensing medication, supervision of ward staff, special duty in the care of critically ill patients, preparation of patients for special examinations (i.e., Ba enemas, glucose tolerance tests, etc.) and total responsibility for care of 25-30 patients during night shift (11-7).

After completing Physical Therapy School I was transferred to a 200-bed hospital overseas to become Chief Technologist of the department. The duties included the treatment of patients with a variety of problems, plus the administration of the department.

DAVID RUSSELL MYERS

1522 N.W. Fourth, #7
Ankeny, Iowa 50001
515/964-1118

EMPLOYMENT HISTORY

6/84 to Present

Environmental Specialist III
Radiological Health Program
Iowa State Department of Health
Lucas State Office Building
Des Moines, Iowa 50319

Supervisor: Donald A. Flater

Primary responsibilities include:

- *Conducting field inspections of radiation emitting equipment and investigating accidents involving same.
- *Evaluating health and safety aspects of radiation emitting installations throughout the state.
- *Participating in emergency planning and response activities.
- *Performing technical review of equipment registration applications submitted to the Program.

In this position I supervise the work of three environmental specialists. I have also been responsible for the training of six individuals in the area of diagnostic testing of radiation surveys.

Promoted from Environmental Specialist II in June 1984

1/81 to 6/84

Environmental Specialist II

Similar duties as above.

1/80 to 1/81

Environmental Specialist I

Similar duties, but without supervisory responsibilities.

PREVIOUS EMPLOYMENT

Laboratory Assistant
Veterans Administration Hospital
Des Moines, Iowa 5/77 to 8/77 and 5/78 to 8/78

CONTINUING EDUCATION

Computed Tomography Dosimetry Training Course
University of Missouri, Kansas City School of Medicine
Food and Drug Administration Center for Medical
Devices and Radiological Health
5/85

FDA Regional Training
Mayo Clinic
Rochester, MN
9/84

Inspection Procedures
U.S. Nuclear Regulatory Commission
7/84

Health Physics and Radioactive Materials
Oakridge, TN
6/84

Medical Use of Radionuclides
U.S. Nuclear Regulatory Commission
Oak Ridge, Tennessee
6/84

Principles of Epidemiology
Centers for Disease Control
and Iowa State Department of Health
3/84

Applied Epidemiology
2/84

Emergency Management Institute
Radiological Accident Assessment Course
National Emergency Training Center
Emmitsburg, Maryland
8/82

Radiological Defense Officer Course
Federal Emergency Management Agency
Des Moines, Iowa
5/82

Radiological Emergency Response Operations Course
U.S. Nuclear Regulatory Commission
Las Vegas, Nevada
1/81

Diagnostic X-Ray Survey Training Program
U.S. Army Academy of Health Sciences
Fort Sam Houston, San Antonio, Texas
6/80

Basic Radiological Health Course
University of Texas Health Science Center
San Antonio, Texas
5/80

EDUCATION

Drake University
Des Moines, Iowa 1/78 to 5/79

Grandview College
Des Moines, Iowa
Biology Major
9/74 to 12/77

East High School
Des Moines, Iowa 1965 to 1969
Diploma 5/69

MILITARY SERVICE

HM-2 Independent Duty Corpsman
Active Duty U.S. Navy
1/70 to 1/74

I was in complete charge of the health and safety of all 35 members of my unit, during stationing in the U.S. and in the Philippines.

PERSONAL INTERESTS, ACTIVITIES

Business League softball (play on three teams); competitive runner; former Little League Coach; enjoy both participative and spectator sports.

BIRTH DATE: July 22, 1950, Des Moines, Iowa

REFERENCES

Professional, financial and personal references will be provided on request.

Bruce W. Hoke1
8349 S.E. 32nd
Runnells, Iowa 50237
515/263-1725

Education

B.S. Degree in Fisheries and Wildlife - Iowa State University - Ames, Iowa
1965-1971

Courses and Seminars

Safety Aspects of Industrial Radiation for State Regulatory Personnel

Orientation Course in Licensing Practices (Special NRC Region III)

Health Physics and Radiation Protection - Oakridge Associated Universities -
Oakridge, Tennessee

Basic Radiological Health - University of Texas Health Center - San Antonio,
Texas

X-Ray Compliance Testing - Fort Sam Houston - San Antonio, Texas

Radiological Incidents Emergency Response - Nuclear Test Site - Mercury, Nevada

Principals of Epidemiology - Centers for Disease Control - Atlanta, Georgia

Applied Epidemiology - Centers for Disease Control - Atlanta, Georgia

Experience

1/83 to Present Radiological Health Program
Iowa State Department of Health
Des Moines, Iowa

Environmental Specialist II - Primarily this position involves conducting field inspections of radiation emitting equipment through a variety of field tests and determining whether it complies with Federal and State regulations. Responsible for informing the equipment possessor of any violations or corrective measures. There is extensive travel around the state of Iowa which requires efficient scheduling and time management ability, and promoting radiation safety techniques to hospitals and health facilities.

It is also my responsibility to investigate any accidents or cases of human injury from any type of radiation emitting equipment and to make a report evaluating the problem and recommending remedial measures to prevent any recurrence.

Bruce W. Hoke1
Page Two

My other duties include training new personnel in the use of field test equipment and calculation formulas and participating in emergency plan exercises for radiological emergency.

1/77 to 1/83

Allied Construction
Fleur Drive
Des Moines, Iowa

General Construction - Primarily I worked on interior construction. Through this I gained a broad base of experience in the use of a wide range of tools and heavy equipment plus skills in many of the trades such as carpentry and masonry.

7/76 to 1/77

U.S. Army Corps of Engineers
Saylorville Lake Project
Johnston, Iowa

Park Ranger - My duties included patrolling, law enforcement and the investigation of any incidents or problems. I assisted in the planning of the recreational areas and the collecting of data concerning the usage of public areas. I received experience in surveying and the use of telemetry equipment as well as in the operation of various heavy equipment.

During the summer months I was also responsible for the supervision of five part-time employees.

References

Furnished upon request.

Richard L. Welke
R.R. 1 Box 57
Grinnell, Iowa 50112

Work Experience

November 1983 to Present

Environmental Specialist II
Radiological Health Program
Environmental Health Section
Iowa State Department of Health
Des Moines, Iowa

- Conduct investigations of obvious or potential sources of radiation control problems to determine the degree of compliance with the appropriate standards, rules and laws. Emphasis is on the testing of diagnostic x-ray equipment throughout the State of Iowa.

June 1983 to November 1983

Lab Assistant III
Iowa State Department of Agriculture
Wallace State Office Building
Des Moines, Iowa

- Conducted tests on the quality of raw and finished dairy products for the State of Iowa.

September 1980 to December 1980

Teachers Assistant
Biology Department
University of Minnesota-Morris

- Prepared biology labs and assisted students in understanding their biology lab work. Administered and corrected examinations.

April 1975 to September 1979

Security Police Dog Trainer-Narcotics

- Leadership and instructional experience. Responsibilities included the handling and training of military working dogs, along with law enforcement and security practices that required the protection of top secret material.

Advanced Training

November 26-30, 1985 - FEMA Nuclear Power Plant Off-Site Radiological Accident Assessment Course

September 24-October 5, 1984 - Federal Training Course for Diagnostic X-Ray Compliance Surveys

April 9-13, 1984 - NIOSH Non-Ionizing-Ionizing Radiation 583/584

March 21-30, 1984 - FEMA/REECO Radiological Emergency Response Training for State and Local Government Emergency Preparedness Personnel

February 13-17, 1984 - University of Texas Health Science Center/San Antonio
- Basic Radiological Health

Education

University of Minnesota-Morris, B.A., June 1983 - Completed four years of liberal arts education with a major in biology. Emphasis also in chemistry and business economics.

College of the Air Force. 1975-1979 - Training in law enforcement and K-9 handling procedures.

John Marshall High School, Rochester, MN., Diploma 1974.

Background and Hobbies

Raised in Rochester, MN. I have travelled inside and outside the U.S. while serving in the Military.

I enjoy a country-like lifestyle of raising animals, growing plants, and hunting and fishing in my spare time.

Paul Edward Koehn
509 N.E. Wanda Avenue
Ankeny, Iowa 50021
Phone: 515/964-7499

Birthdate: September 17, 1944
Social Security #485-52-8065

Employment History

2/85 to Present

Environmental Specialist I
Radiological Health Program
Environmental Health Section
Iowa State Department of Health
Lucas State Office Building
Des Moines, Iowa 50319

Supervisor: Donald A. Flater, Coordinator

Primary Responsibilities Include:

Conducting field inspections of radiation emitting equipment through a variety of field tests and determining whether it complies with Federal and State regulations. Responsible for informing the equipment possessor of any violations or corrective measures. There is extensive travel around the State of Iowa which requires efficient scheduling and time management ability, and promoting radiation safety techniques to hospitals and health care facilities.

Previous Employment

Park Ranger
Iowa Conservation Commission
7/82 to 2/85

Park Attendant
Iowa Conservation Commission
8/79 to 7/82

Fisheries Technician
Iowa Conservation Commission
5/77 to 10/78

Biologist Assistant
Michigan Department of Natural Resources
5/73 to 8/76

Continuing Education in Field

Fundamental Course for Radiological Response Teams
Mount Pleasant, Iowa - 3/85

Fundamental Course for Radiological Monitors
Mount Pleasant, Iowa - 3/85

Education

Upper Iowa University
Fayette, Iowa - 8/72-5/77

Kirtland Community College
Roscommon, Michigan - 8/72-5/74

University of Dubuque
Dubuque, Iowa 8/62-5/63

Military Service

Sgt. X-Ray and Operating Room Technician
Active Duty U.S. Air Force - 2/64-2/68

Obtained education and passed testing to become member of American Registry of Radiological Technologists

Hobbies or Interests

Hunting, Fishing, Photography and Writing

References

Will be provided on request

Appendix V

Sample Forms

Iowa State Department of Health
Radiological Health Program
Environmental Health Section
Lucas State Office Building
Des Moines, Iowa 50319

DRAFT

APPLICATION FOR MATERIALS LICENSE

1.a. NAME AND MAILING ADDRESS OF APPLICANT (institution, firm, clinic, physician, etc.) INCLUDE ZIP CODE TELEPHONE NO. AREA CODE () _____		1.b. STREET ADDRESS(ES) AT WHICH RADIOACTIVE MATERIAL WILL BE USED (if different from 1.a.) INCLUDE ZIP CODE 	
2. PERSON TO CONTACT REGARDING THIS APPLICATION TELEPHONE NO. AREA CODE () _____		3. THIS IS AN APPLICATION FOR (Check appropriate item) <input type="checkbox"/> NEW LICENSE <input type="checkbox"/> AMENDMENT TO LICENSE NUMBER _____ <input type="checkbox"/> RENEWAL OF LICENSE NUMBER _____	
4. INDIVIDUAL USERS (Name individuals who will use or directly supervise use of radioactive material.)		5. RADIATION SAFETY OFFICER (RSO) (Name of person designated as radiation safety officer. If other than individual user, complete resume of training and experience must be provided with application.)	
SUBMIT ADDITIONAL INFORMATION FOR ITEMS THROUGH 11 on 8 1/2" x 11" PAPER			
5. RADIOACTIVE MATERIAL a. Element and mass number, b. chemical and/or physical form and c. maximum amount which will be possessed at any one time.		6. PURPOSES(S) FOR WHICH LICENSED MATERIAL WILL BE USED	
7. INDIVIDUAL(S) RESPONSIBLE FOR RADIATION SAFETY PROGRAM AND THEIR TRAINING AND EXPERIENCE.		8. TRAINING FOR INDIVIDUALS WORKING IN OR FREQUENTING RESTRICTED AREAS.	
9. FACILITIES AND EQUIPMENT		10. RADIATION SAFETY PROGRAM	
11. WASTE MANAGEMENT		12. LICENSEE FEES FEE CATEGORY	AMOUNT ENCLOSED \$
13. CERTIFICATION. (Must be completed by applicant) THE APPLICANT UNDERSTANDS THAT ALL STATEMENTS AND REPRESENTATIONS MADE IN THIS APPLICATION ARE BINDING UPON THE APPLICANT			
14. SIGNATURE-CERTIFYING OFFICER TITLE		TYPED/PRINTED NAME DATE	

IOWA STATE DEPARTMENT OF HEALTH
RADIOLOGICAL HEALTH PROGRAM - ENVIRONMENTAL HEALTH SECTION

OCCUPATIONAL EXTERNAL RADIATION EXPOSURE HISTORY

DRAFT

Identification

1. Name (Print - Last, First, Middle)

2. Social Security No.

3. Date of Birth (Month, Day, Year)

4. Age in full years

OCCUPATIONAL EXPOSURE - PREVIOUS HISTORY

5. Previous employments involving radiation exposure - List name and address of employer

6. Dates of Employment (From - To)

7. Periods of Exposure

Previous Dose History

8. Whole Body (REM)

9. Record or Calculated (Insert One)

10. Remarks

11. Accumulated Occupational Dose - Total

13. Calculations - Permissible Dose

Whole Body:

(a) Permissible Accumulated Dose =
5(N-18) = _____ REM

(b) Total exposure to date =
(From Item 11) = _____ REM

(c) Unused part of permissible accumulated Dose
(A - B) = _____ REM

12. Certification - I verify that the exposure history listed in Columns 3, 4, and 7 is correct and complete to the best of my knowledge and belief.

Employee's Signature

Date

14. Name of Licensee or Registrant

INSTRUCTIONS FOR PREPARATION OF AGENCY FORM SHD-2.0-793 (7/84)

This form or a clear and legible record containing all the information required on this form must be prepared by each licensee or registrant of the Iowa State Department of Health who, pursuant to 40.2(1), proposes to expose an individual to a radiation dose in excess of the amounts specified in 40.2(1)a of these rules in Chapter 40, "Standards for Protection Against Radiation." The requirement for completion of this form is contained in 40.3(136C). The information contained in this form is used for estimating the external accumulated occupational dose of the individual for whom the form is completed. Agency Form SHD-2.0-793 (7/84) shall be completed for each individual to be exposed to a radiation dose in excess of the limits specified in 40.2(1)a of Chapter 40 of the Iowa State Department of Health rules.*

Listed below by item are instructions and additional information directly pertinent to completing this form:

Identification

- Item 1. Self-explanatory.
- Item 2. Self-explanatory except that, if individual has no social security number, the word "none" shall be inserted.
- Item 3. Self-explanatory.
- Item 4. Enter the age in full years. This is called "N" when used in calculating the Permissible Dose. N is equal to the number of years of age of the individual on his last birthday.

Occupational Exposure

- Item 5. List the name and address of each previous employer and the address of employment. Start with the most recent employer and work back. Include only those periods of employment since the eighteenth birthday involving occupational exposure to radiation. For periods of self-employment, insert the word "self-employed."
- Item 6. Give the dates of employment.
- Item 7. List periods during which occupational exposure to radiation occurred.
- Item 8. List the dose recorded for each period of exposure from records of previous occupational exposure of the individual as calculated under 40.3(136C). Dose is to be given in rem. "Dose to the whole body" shall be deemed to include any dose to the whole body, gonads, active blood-forming organs, head and trunk, or lens of eye.
- Item 9. After each entry in Item 8 indicate in Item 9 whether dose is obtained from records or calculated in accordance with 40.3(136C).
- Item 10. Self-explanatory.

*This form requires the signature of the employee concerned.

Total Accumulated Occupational Dose (Whole Body)

Item 11. The total for the whole body is obtained by summation of all values in Item 8.

Certification

Item 12. Upon completion of the report, the employee must certify that the information in Columns 5, 6, and 7 is accurate and complete to the best of his knowledge. The date is the date of his signature.

Calculations

Item 13. The lifetime accumulated occupational dose for each individual and the permissible dose under 40.2(1)b are obtained by carrying out the following steps:

The value for N should be taken from Item 4. Subtract 18 from N and multiply the difference by 5 rem. (For example, John Smith, age 32; $N = 32$; $PAD = 5(32 - 18) = 70$ rem.) Enter total exposure to date from Item 11. Subtract (b) from (a) and enter the difference under (c). The value in (c) represents the unused part of the permissible accumulated dose. This value for permissible dose is to be carried forward to SHD-2.0-794 (7/84), "Current Occupational External Radiation Exposre (Whole Body)."

Item 14. Self-explanatory.

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IOWA STATE DEPARTMENT OF HEALTH
RADIOLOGICAL HEALTH PROGRAM - ENVIRONMENTAL HEALTH SECTION

CERTIFICATE-MEDICAL USE OF
RADIOACTIVE MATERIAL UNDER GENERAL LICENSE

470-39.24(136C) of our Radiation Emitting Equipment Rules, Title IV, establishes a general license authorizing physicians to possess certain small quantities of I-125, I-131, Co-57, Co-58, Co-60, and Cr-51 for specified diagnostic uses. Possession of radioactive material under 39.24(136C) is not authorized until the physician has filed Agency Form SHD-2.0-789 and received from the Agency a validated copy of Agency Form SHD-2.0-789 with certification number assigned.

INSTRUCTIONS

Submit this form in triplicate to Radiological Health Program, Environmental Health Section, Iowa State Department of Health. A certification number will be assigned and a validated copy of Agency Form SHD-2.0-789 will be returned. Please print or type your name and address (including ZIP Code), within the dotted lines below:

.....
.
.
.
.
.....

.....
: Certification Number: :
.....
(Leave this space blank --
number to be assigned by Agency)

I am a duly licensed physician [authorized to dispense drugs] in the practice of medicine. My _____ license number is: _____
(state)

CERTIFICATE

I hereby certify that:

1. All information in this certificate is true and complete.
2. I have appropriate radiation measuring instruments to carry out the diagnostic procedures for which I will use radioactive material under the general license of 39.24(136C) and I am competent in the use of such instruments.

3. I understand that Agency rules require that any change in the information furnished on this certificate be reported to the Agency within 30 days from the date of such change.
4. I have read and understand the provisions of 39.24(136C) of Agency rules; and I understand that I am required to comply with those provision as to all radioactive material which I receive, possess, use, or transfer under the general license for which this Certificate is filed with the Agency:

DATE _____ BY _____
(Signature of person filing form)

DRAFT

CONDITIONS AND LIMITATIONS OF GENERAL LICENSE 39.24(136C)

470-39.24(136C) Medical diagnostic uses.

39.24(1) A general license (radioactive material other than source material) is hereby issued to any physician to receive, possess, transfer or use radioactive material set forth below for the state diagnostic uses, provided, however, that the use is in accordance with the provisions of 39.24(2), 39.24(3), and 39.24(4), the radioactive material is in the form of capsules, disposable syringes, or other prepackaged individual doses; and the radioactive material has been manufactured in accordance with a specific license issued by the Agency pursuant to 39.39(136C), or by the U.S. Nuclear Regulatory Commission, any Agreement State or a Licensing State pursuant to equivalent rules authorizing distribution to persons generally licensed pursuant to 39.24(1) or its equivalent:

- a. Chromium-51 as sodium radiochromate for determination of red blood cell volumes and studies of red blood cell survival time.
- b. Cobalt-57 for the measurement of intestinal absorption of cyanocobalamin.
- c. Cobalt-58 for the measurement of intestinal absorption of cyanocobalamin.
- d. Cobalt-60 for the measurement of intestinal absorption of cyanocobalamin.
- e. Iodine-125 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume.
- f. Iodine-131 as sodium iodide for measurement of thyroid uptake. And
- g. Iodine-131 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume.

39.24(2) No physician shall receive, possess, use or transfer radioactive material pursuant to the general license established by 39.24(136C) until Agency Form SHD-2.0-789, "Certificate - Medical Use of Radioactive Material Under General License" has been filed with the Agency and a validated copy of the Agency Form SHD-2.0-789 has been received from the Agency with certification number assigned. The generally licensed physician shall furnish on Agency Form SHD-2.0-789 the following information and such other information as may be required by that form:

- a. Name and address of the generally licensed physician.
- b. A statement that the generally licensed physician is a duly licensed physician [authorized to dispense drugs] in the practice of medicine in this State. And
- c. A statement that the generally licensed physician has appropriate radiation measuring instruments to carry out the diagnostic procedures for which the use of radioactive material is proposed under the general license of 39.24(136C) and that the physician is competent in the use of such instruments.

39.24(3) A physician who receives, possesses or uses a pharmaceutical containing radioactive material pursuant to the general license established by 39.24(1):

a. Shall not possess at any one time, pursuant to the general license in 39.24(1) more than:

- (1) 200 microcuries of iodine-131.
- (2) 200 microcuries of iodine-125.
- (3) 5 microcuries of cobalt-57.
- (4) 5 microcuries of cobalt-58.
- (5) 5 microcuries of cobalt-60. And
- (6) 200 microcuries of chromium-51.

b. Shall store the pharmaceutical until administered in the original shipping container, or a container providing equivalent radiation protection.

c. Shall use the pharmaceutical only for the uses authorized by 39.24(1).

d. Shall not administer the pharmaceutical to a woman with confirmed pregnancy or to a person under 18 years of age. And

e. Shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the Agency, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or in any manner other than in the unopened, labeled shipping container as received from the supplier, except by administering it to a patient.

39.24(4) The generally licensed physician possessing or using radioactive material under the general license of 39.24(1) shall report in duplicate to the Agency, any changes in the information furnished by him on Agency Form SHD-2.0-798, "Certificate Medical Use of Radioactive Material Under General License,". The report shall be submitted within 30 days after the effective date of such change.

39.24(5) Any person using radioactive material pursuant to the general license of 39.24(1) is exempt from the requirements of Chapter 40 with respect to the radioactive material covered by the general license.

NOTE: 470-39.39(136C) requires manufacturers of radiopharmaceuticals which are under the general license in this paragraph to include one of the following statements in the label affixed to the container or in the leaflet or brochure which accompanies the radiopharmaceutical.

This radioactive drug may be received, possessed, and used only by physicians licensed [to dispense drugs] in the practice of medicine. Its receipt, possession, use, and transfer are subject to the regulations and

a general license or its equivalent of the U.S. Nuclear Regulatory Commission or of a State with which the Commission has entered into an agreement for the exercise of regulatory authority.

(Name of Manufacturer)

This radioactive drug may be received, possessed, and used only by physicians licensed [to dispense drugs] in the practice of medicine. Its receipt, possession, use, and transfer are subject to the regulations and a general license or its equivalent of a Licensing State.

(Name of Manufacturer)

NOTE

If larger quantities or other forms of radioactive material than those specified in the general license of 39.24(136C) are required, the physician should file an "Application for Radioactive Material License", Agency Form ** and obtain a specific radioactive material license. Copies of application and certification forms may be obtained from the Radiological Health Program, Environmental Health Section, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

** To be added when new applicaiton is established.

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IOWA STATE DEPARTMENT OF HEALTH RADIOLOGICAL HEALTH PROGRAM - ENVIRONMENTAL HEALTH SECTION

NOTICE TO EMPLOYEES

STANDARDS FOR PROTECTION AGAINST RADIATION; NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS

In Radiation Emitting Equipment Rules Title IV, Iowa State Department of Health has established standards for your protection against radiation hazards. In Radiation Emitting Equipment Rules Title IV, Iowa State Department of Health has established certain provisions for the options of workers engaged in work under an agency license or registration.

YOUR EMPLOYER'S RESPONSIBILITY

Your employer is required to --

1. Apply these rules to work involving sources of radiation.
2. Post or otherwise make available to you a copy of the Iowa State Department of Health, Environmental Health Section, Radiological Health Program rules and the operating procedures which apply to work you are engaged in, and explain their provisions to you.
3. Post Notice of Violation involving radiological working conditions, proposed imposition of civil penalties and orders.

YOUR RESPONSIBILITY AS A WORKER --

You should familiarize yourself with those provisions of the Radiological Health Program rules, and the operating procedures which apply to the work you are engaged in. You should observe their provisions for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE RULES

1. Limits on exposure to radiation and radioactive material in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Personnel monitoring, surveys, and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding Agency inspections; and
7. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY

1. The Radiation Emitting Equipment Rules Title IV, requires that your employer give you a written report if you receive an exposure in excess of any applicable limit as set forth in the rules or in the license. The basic limits for exposure to employees are set forth in Sections 40.2(1), 40.4(136C), and 40.5(136C) of the rules. These sections specify limits of exposure to radiation and exposure to concentrations of radioactive material in air.
2. If you work where personnel monitoring is required, and if you request information on your radiation exposures, your employer must:
 - (a) Give you a written report, upon termination of your employment, of your radiation exposures, and
 - (b) Advise you annually of your exposure to radiation.

INSPECTIONS

All licensed or registered activities are subject to inspection by representatives of the Iowa State Department of Health. In addition, any worker or representative of workers who believes that there is a violation of the Radiation Emitting Equipment Rules Title IV, the rules issued thereunder, or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Iowa State Department of Health. The request must set forth the specific grounds for the notice, and must be signed by the worker as the representative of the workers. During inspections, Agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition which he believes contributed to or caused any violation as described above.

POSTING REQUIREMENT

COPIES OF THIS NOTICE MUST BE POSTED IN A SUFFICIENT NUMBER OF PLACES IN EVERY ESTABLISHMENT WHERE EMPLOYEES ARE EMPLOYED IN ACTIVITIES LICENSED OR REGISTERED, PURSUANT TO CHAPTERS 38 AND 39, BY THE IOWA STATE DEPARTMENT OF HEALTH, TO PERMIT EMPLOYEES WORKING IN OR FREQUENTING ANY PORTION OF A RESTRICTED AREA TO OBSERVE A COPY ON THE WAY TO OR FROM THEIR PLACE OF EMPLOYMENT.

DRAFT

IOWA STATE DEPARTMENT OF HEALTH
RADIOLOGICAL HEALTH PROGRAM - ENVIRONMENTAL HEALTH SECTION

REGISTRATION CERTIFICATE - USE OF DEPLETED URANIUM
UNDER GENERAL LICENSE

470-39.16(136C) establishes a general license authorizing the use of depleted uranium contained in industrial products or devices for mass-volume applications. This form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium.

3. I hereby file SHD-2.0-791 pursuant to 39.16(136C) attached for use of depleted uranium contained in industrial products or devices for products or devices for mass-volume applications.

4. To be completed by the Agency.

INSTRUCTIONS

1. Submit this form in triplicate to:

Radiological Health Program
Environmental Health Section
Iowa State Department of Health
Lucas State Office Building
Des Moines, Iowa 50319

FILE NUMBER:

(Leave this space blank -
number to be assigned by
Agency)

2. Please print or type the name and address (including ZIP code) of the registrant for whom this form is filed. Position the first letter of the address below the left dot and do not extend the address beyond the beyond the right dot. (A file number will be assigned and a copy of Form SHD-2.0-791 (7/84) will be returned.)

5. Name and/or title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in 39.16(136C).

6. Certification

I hereby certify that:

a. All information in this registration certificate is true and complete.

- b. The registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in 39.16(136C) and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium.
- c. I understand that Agency rules require that any changes in information furnished by a registrant on this registration certificate be reported in writing to the Agency within 30 days after the effective date of such change.
- d. I understand that the registrant is required to comply with the provisions of 49.16(136C) with respect to all depleted uranium which he receives, acquires, uses, or transfers under the general license for which this registration certificate is filed with the Agency.

DATE: _____ BY: _____
(Signature of person filing form)

(Printed name and title of person filing form.)

DRAFT

470-39.16(136C) Depleted uranium in industrial products and devices.

39.16(1) A general license is hereby issued to receive, acquire, possess, use or transfer, in accordance with the provisions of 39.16(2), 39.16(3), 39.16(4), and 39.16(5), depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

39.16(2) The general license in 39.16(1) applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to 39.45(136C) or in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission or an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the U.S. Nuclear Regulatory Commission or an Agreement State.

39.16(3) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by 39.16(1) shall file Agency Form SHD-2.0-791 "Registration Certificate - Use of Depleted Uranium Under General License," with the Agency. The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium. The licensee shall furnish on Agency Form SHD-2.0-791 the following information and such other information as may be required by that form:

- a. Name and address of the registrant.
- b. A statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in 39.16(1) and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium.
- c. Name and/or title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in 39.16(3)a(2). And
- d. The registrant possessing or using depleted uranium under the general license established by 39.16(1) shall report in writing to the Agency any changes in information furnished in Agency Form SHD-2.0-791 "Registration Certificate - Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of such change.

39.16(4) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by 39.16(1):

- a. Shall not introduce such depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium.
- b. Shall not abandon such depleted uranium.
- c. Shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of 39.55(136C). In the case where the transferee receives the depleted uranium pursuant to the general license established by 39.16(1), the transferor shall furnish the transferee a copy of this rule and a

copy of Agency Form SHD-2.0-791. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's rule equivalent to 39.16(1), the transferor shall furnish the transferee a copy of this rule and a copy of the Agency Form SHD-2.0-791 accompanied by a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in this rule.

d. Within 30 days of any transfer, shall report in writing to the Agency the name and address of the person receiving the depleted uranium pursuant to such transfer. And

e. Shall not export such depleted uranium except in accordance with a license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 110.

39.16(5) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by 39.16(1) is exempt from the requirements of Chapter 40 of these rules with respect to the depleted uranium covered by that general license.

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CERTIFICATE - IN VITRO TESTING WITH RADIOACTIVE MATERIAL UNDER GENERAL LICENSE

470-39.25(136C) of Chapter 39 of the Radiation Emitting Equipment Rules Title IV, establishes a general license authorizing physicians, veterinarians, clinical laboratories, and hospitals to possess certain small quantities of radioactive material for in vitro clinical or laboratory tests not involving the internal or external administration of the radioactive material or the radiation therefrom to human beings or animals. Possession of radioactive material under 39.25(136C) is not authorized until the physician, veterinarian, clinical laboratory, or hospital has filed SHD-2.0-790 (7/84) and received from the Agency a validated copy of SHD-2.0-790 (7/84) with certification number.

INSTRUCTIONS

Submit this form in triplicate to _____.

A certification number will be assigned and a validated copy of SHD-2.0-790 (7/84) will be returned.

1. Please print or type within the dotted lines, below, the name and address (including ZIP Code) of the physician, veterinarian, clinical laboratory, or hospital for whom or for which this form is filed.

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2. I hereby apply for a certification pursuant to 39.25(136C) of Chapter 39 for of radioactive material for (Please check one):

- a. Myself, a duly licensed physician [authorized to dispense drugs] in the practice of medicine.
- b. The above-named clinical laboratory.
- c. The above-named hospital.
- d. Myself, a duly licensed veterinarian.

3. To be completed by the Agency.

.....
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Certification Number
.
.
.....

(Leave this space blank--number to be assigned by Agency.)

4. If place of use is different from address in Item 1, please give complete address:

5. Certification:

I hereby certify that:

- a. All information in this certification is true and complete.
- b. Appropriate radiation measuring instruments are available to carry out the tests for which radioactive material will be used under the general license of 39.25(136C) of Chapter 39. The tests will be performed only by personnel competent in the use of the instruments and in the handling of the radioactive material.
- c. I understand that Agency rules require that any change in the information furnished on this certificate be reported to the Agency, within 30 days from the effective date of such change.
- d. I have read and understand the provisions of 39.25(136C) of Chapter 39; and I understand that compliance with those provisions is required as to all radioactive material which is received, acquired, possessed, used, or transferred under the general license for which this Certificate is filed with the Agency.

DATE: _____ BY: _____
(Signature of person filing form)

(Printed name and title of position of person filing form)

DRAFT

CONDITIONS AND LIMITATIONS OF GENERAL LICENSE 39.25 (136C)

470-39.25(136C) General license for use of radioactive material for certain in vitro clinical or laboratory testing.

39.25(1) A general license (radioactive material other than source material) is hereby issued to any physician, veterinarian, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests, in accordance with the provisions of 39.24(2), 39.24(3), 39.24(4), 39.24(5) and 39.24(6), the following radioactive materials in prepackaged units for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

- a. Carbon-14, in units not exceeding 10 microcuries each.
- b. Cobalt-57, in units not exceeding 10 microcuries each.
- c. Hydrogren-3 (tritium), in units not exceeding 50 microcuries each.
- d. Iodine-125, in units not exceeding 10 microcuries each.
- e. Mock Iodine-125 reference or calibration sources, in units not exceeding 0.05 microcurie of iodine-129 and 0.005 microcurie of americium-241 each.
- f. Iodine-131, in units not exceeding 10 microcuries each.
- g. Iron-59, in units not exceeding 20 microcuries each.
- h. Selenium-75, in units not exceeding 10 microcuries each.

39.25(2) No person shall receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by 39.25(1) until Agency Form SHD-2.0-790, "Certificate - In Vitro Testing with Radioactive Material Under General License," has been filed with the Agency and a validated copy of Agency Form SHD-2.0-790 with certification number assigned has been received from the Agency, or until the authorization has been granted pursuant to 39.31(3)c to use radioactive material under the general license in 39.25(136C). The physician, veterinarian, clinical laboratory or hospital shall furnish on Agency Form SHD-2.0-790 the following information and such other information as may be required by that form:

- a. Name and address of the physician, veterinarian, clinical laboratory or hospital.
- b. The location of use. And
- c. A statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive material as authorized under the general license in 39.25(1) and that such tests will be performed only by personnel competent in the use of such instruments and in the handling of the radioactive material.

39.25(3) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by 39.25(1) shall comply with the following:

a. The general licensee shall not possess at any one time, pursuant to the general license in 39.25(1), at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, iron-59 and cobalt-57 in excess of 200 microcuries.

b. The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

c. The general licensee shall use the radioactive material only for the uses authorized by 39.25(1).

d. The general licensee shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the Agency, the U.S. Nuclear Regulatory Commission, any Agreement State or Licensing State, nor transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from the supplier.

e. The general licensee shall dispose of the Mock Iodine-125 reference or calibration sources described in 39.25(1)e as required by 40.14(136C) of these rules.

39.25(4) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to 39.25(1):

a. Except as prepackaged units, which are labeled in accordance with the provisions of an applicable specific license, issued pursuant to 39.40(136C) or in accordance with the provisions of a specific license issued by the U.S. Nuclear Regulatory Commission, any Agreement State or Licensing State which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), iron-59, selenium-75, cobalt-57, or Mock Iodine-125 to persons generally licensed under 39.25(136C) or its equivalent. And

b. Unless one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

This radioactive material shall be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a State with which the Commission has entered into an agreement for the exercise of regulatory authority.

Name of manufacturer

OR

This radioactive material shall be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the rules and a general license of a Licensing State.

Name of manufacturer

39.25(5) The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license of 39.25(1) shall report in writing to the Agency, any changes in the information furnished on Agency Form SHD-2.0-790, "Certificate - In Vitro Testing with Radioactive Material Under General License." The report shall be furnished within 30 days after the effective date of such change.

39.25(6) Any person using radioactive material pursuant to the general license of 39.25(1) is exempt from the requirements of Chapter 40 of these rules with respect to radioactive material covered by that general license, except that such persons using the Mock Iodine-125 described in 39.25(1)e shall comply with the provisions of 40.14(136C), 40.15(2) and 40.15(3) of these rules;

NOTE

If larger quantities or other forms of radioactive material than those specified in the general license of 39.25(136C) are required, an "Application for Radioactive Material License", Agency Form -----, should be filed to obtain a specific radioactive material license. Copies of application and certification forms may be obtained from _____.

IOWA STATE DEPARTMENT OF HEALTH
RADIOLOGICAL HEALTH PROGRAM - ENVIRONMENTAL HEALTH SECTION
CURRENT OCCUPATIONAL EXTERNAL RADIATION EXPOSURE

DRAFT

Identification

1. Name (Print - Last, First, Middle)

2. Social Security No.

3. Date of Birth (Month, Day, Year)

4. Name of Licensee or Registrant

OCCUPATIONAL EXPOSURE

5. Dose Recorded for (Specify whole body, skin of whole body, hands and forearms, feet and ankles)

6. Whole body Dose Status (rem)

7. Method of Monitoring (e.g., Film badge-FB, Pocket Chamber-PC, Calculations-Calc.)

X or gamma

Meta

Neutrons

8. Period of Exposure (from - to)

Dose For the Period (rem)

9. X or Gamma

10. Beta

11. Neutron

12. Total

13. Running Total for Calendar Quarter (REM)

LIFETIME ACCUMULATED DOSE

14. Previous Total (Rem)

15. Total Quarterly Dose
date rem

16. Total Accumulated Dose (Rem)

17. Perm. Acc. Dose 5(N-18) (rem)

18. Unused Part of Permissible Accumulated Dose (rem)

DRAFT

INSTRUCTIONS FOR PREPARATION OF AGENCY FORM SHD-2.0-794 (7/84)

The preparation and safekeeping of this form or a clear and legible record containing all the information required on this form is required pursuant to 40.15(1) of "Standards for Protection Against Radiation," Chapter 40, as a current record of occupational external radiation exposures. Such a record must be maintained for each individual for whom personnel monitoring is required under Section 40.9(2). Note that a separate Agency Form SHD-2.0-794 (7/84) is to be used for recording external exposure to (1) the whole body; (2) skin of whole body; (3) hands and forearms; or (4) feet and ankles, as provided by Item 5 below.

List below by item are instructions and additional information directly pertinent to completing this form.

Identification

- Item 1. Self-explanatory.
- Item 2. Self-explanatory except that, if individual has no social security number, the word "none" shall be inserted.
- Item 3. Self-explanatory.
- Item 4. Self-explanatory.

Occupational Exposure

- Item 5. "Dose to the whole body" shall be deemed to include any dose to the whole body, gonads, active blood-forming organs, head and trunk, or lens of eye. Unless the lenses of the eyes are protected with eye shields, dose recorded as whole body dose should include the dose delivered through a tissue equivalent absorber having a thickness of 300 mg/cm^2 or less. When the lenses of the eyes are protected with eye shields having a tissue equivalent thickness of at least 700 mg/cm^2 , dose recorded as whole body dose should include the dose delivered through a tissue equivalent absorber having a thickness of $1,000 \text{ mg/cm}^2$ or less.

Dose recorded as dose to the skin of the whole body, hands and forearms, or feet and ankles should include the dose delivered through a tissue equivalent absorber having a thickness of 7 mg/cm^2 or less. The dose to the skin of the whole body, hands and forearms, or feet and ankles should be recorded on separate forms unless the dose to those parts of the body has been included as dose to the whole body on a form maintained for recording whole body exposure.

- Item 6. This item need be completed only when the sheet is used to record whole body exposures and the licensee or registrant is exposing the individual under the provisions of 40.2(1)b which allows up to 3 rems per quarter to the whole body. Enter in this item the unused part of permissible

accumulated dose taken from previous records of exposure, i.e., Item 18 of the preceding Agency Form SHD-2.0-794 (7/84) or Item 13 of Agency Form SHD-2.0-793 (7/84) if the individual's exposure during employment with the licensee begins with this record.

- Item 7. Indicate the method used for monitoring the individual's exposure to each type of radiation to which he is exposed in the course of his duties. Abbreviations may be used.
- Item 8. Doses received over a period of less than a calendar quarter need not be separately entered on the form provided that the licensee maintains a current record of the doses received by the individual which have not as yet been entered on the form. The period of exposure should specify the day the measurement of that exposure was initiated and the day on which it was terminated. For example, if only quarterly doses are entered, the period of running from Monday, January 1, 1962, through Friday, March 30, 1962, and would be indicated in this item as January 1, 1962 - March 30, 1962. If weekly doses are entered, a film badge issued Monday morning, January 1, 1962, and picked up Friday, January 5, 1962, would be indicated as January 1, 1962 - January 5, 1962.
- Items 9, 10 and 11. Self-explanatory. The values are to be given in rem. All measurements are to be interpreted in the best method known and in accordance with the definition in 38.2(136C) calculations are made to determine dose, a copy of such calculations is to be maintained in conjunction with this record. In any case where the dose for a calendar quarter is less than 10% of the value specified in 40.2(1)a, the phrase "less than 10%" may be entered in lieu of a numerical value.
- Item 12. Add the values under Items 9, 10, and 11 for each period of exposure and record the total. In calculating the "Total" any entry "less than 10%" may be disregarded.
- Item 13. The running total is to be maintained on the basis of calendar quarters. 470-38.2(136C) defines calendar quarter. No entry need be made in this item if only calendar quarter radiation doses are recorded in Items 9, 10, 11 and 12.

Lifetime Accumulated Dose (Whole Body)

NOTE: If the licensee or registrant chooses to keep the individual's exposure below that permitted in 40.2(1)a. Items 14 through 18 need not be completed. However, in that case the total whole body dose for each calendar quarter recorded in Item 13 (or Item 12 if quarterly doses are entered in Item 12) should not exceed 1 1/4 rem.

If an individual is exposed under the provisions of 40.2(1)b, complete Items 14 through 18 at the end of each calendar quarter and when the sheet is filled. Values in Item 13, when in the middle of a calendar quarter, and values in Item 18, must be brought forward to next sheet for each individual.

- Item 14. Enter the previous total accumulated dose from previous dose records for the individual (e.g., from Item 16 of Agency Form SHD-2.0-794 (7/84) or Item 11 of Agency Form SHD-2.0-793 (7/84)). The total

occupational radiation dose received by the individual must be entered in this item, including any occupational dose received from sources of radiation not licensed or registered by the Agency. If the individual was exposed to sources of radiation not licensed or registered by the Agency during any calendar quarter after completing Agency Form SHD-2.0-793 (7/84) and personnel monitoring equipment was not worn by the individual, it should be assumed that the individual received a dose of $1 \frac{1}{4}$ rems during each such quarter.

- Item 15. Enter the total calendar quarter dose from Item 13 (or from Item 12 if quarterly doses are entered in Item 12) and the date designating the end of the calendar quarter in which the dose was received (e.g., March 30, 1962.)
- Item 16. Add Item 14 and Item 15 and enter that sum.
- Item 17. Obtain the Permissible Accumulated Dose (PAD) in rem for the Whole Body. "N" is equal to the number of years of age of the individual on his last birthday. Subtract 18 from N and multiply the difference by 5 rem (e.g., John Smith, age 32; $N=32$, $PAD = 5(32-18) = 70$ rem).
- Item 18. Determine the unused part of the PAD by subtracting Item 16 from Item 17. The unused part of the PAD is that portion of the Lifetime Accumulated Dose for the individual remaining at the end of the period covered by this sheet.

Appendix VI

Inventory of Radiological Health Equipment

Appendix VI

DEVICE	QUANTITY	MANUFACTURER	MODEL NO.	SERIAL NO.	RANGE	DESCRIPTION
Air Sampler/High Volume	2	Nuclear Association Air Sampler Division	IF1A	782554 782555	10-70 cu. ft/min	High volume air sampler (portable).
Air Sampler/Low Volume	2	Nuclear Association Air Sampler Division	SJM-1	782557 782556	15-35 liter/min	Low volume air sampler (portable).
*Q/A Dosimeter	1	Nuclear Associates Division of Victoreen, Inc.	06-525	14312	In exposure-R	Used to check the exposure output of x-ray units for Quality Assurance test.
MDH 1015 X-ray Monitor		MDH Ind.	1015	*1473, *1585 1795, 1797 1798, 1976	1 mR/min-650 R/min 0.02 mR-99.9 R 1 mR-13 R 1 mS-99.95	Portable; Ion Chamber, X-ray & Time 10x 5-6 Chamber.
Isotropic Broadband Field Strength Meter	1	Holaday Ind., Inc. Eden Prairie, MN 55344	HI-3002 Broadband Exposure Meter	39188	Green Probe (H field) 3.77-3770 mW/cm ² Red (E field) 2.65-2653 mW/cm ² "Eff Pwr Density" Full Scale Value	The Holaday HI-3002 Isotropic Broadband field strength meter used to measure both electric and magnetic fields of radiofrequencies.
Minimonitor II	5	Nuclear Associates Division of Victoreen, Inc.	Model 05-571	10112, 26609 10098, 10070 10098	A three range selector switch 0-10, 0-100 and 0-1000 mR/hr	Minimonitor II is a portable survey meter for detecting radiation.
Dosimeter Charger	3	Victoreen Instrument Co., Cleveland, OH	2000A	9287, 9231	--	Portable dosimeter charger for recharg- ing self-reading Victoreen package dosimeters.
Self-reading Pocket Dosimeter	5	Victoreen	541L	2445A, 1720A 2485A, 2535A	0-200 mR Low Energy	Self-reading personnel monitoring device.

DEVICE	QUANTITY	MANUFACTURER	MODEL NO.	SERIAL NO.	RANGE	DESCRIPTION
Self-reading Pocket Dosimeter	5	Victoreen	541R	2635B, 1705B 2488B, 2892B	0-200 mR High Energy	Self-reading personnel monitoring device.
Micro R Meter	2	Ludlum Measurements, Inc.	14C	33306, 33263	x0.1, x1, x10, x100, x1000 the reading scale is 0-2 mR/hr and 0-20 uR/hr	Portable survey instrument to measure ionizing radiation.
Microwave Survey Meter	3	Holaday Ind., Inc.	HI 1501	27315, 27314 27313	0-100 mW/cm ²	Instrument used to survey microwave oven.
*Laser Radiometer	1	EG & G	460-1A	346	x10 ⁻⁸ - 10 ² 0.1 - 10 mW	Instrument used to determine laser output.
Microwave Survey Meter	1	Holaday Ind., Inc.	1600	28387	10mW - 245 MHz 20mW - 10mW (915 MHz)	Instrument used to survey microwave oven.
*Xeroradiography Breast Phantom	1	Xerox or Oak	--	--	--	Device to determine image quality for mammographic equipment.
Super Dad Digital Alarming Dosimeter	1	Dosimeter Corp. Cincinnati, OH	1888	63-1183	x10, x100, x1000 mR	Alarm dosimeter to warn an individual when they are entering a radiation level.
MDH X-ray Compliance Test Kit	4 - 3 *3	MDH Ind.	10TS	--	--	Items contained in the kit are for doing inspection on x-ray units for FDA and State x-ray compliance inspections.

DEVICE	QUANTITY	MANUFACTURER	MODEL NO.	SERIAL NO.	RANGE	DESCRIPTION
DIGAPHOT	5	United Detector Technology, Inc. Santa Monica, CA	3300	*3300-0038 *3300-0115 *3300-0132 *3300-0122 *3300-0137	0-1000 Foot Candles	To measure the light field intensities of the collimator of x-ray units.
Chargers for DIGAPHOT		Same	1550	CH 10-7-1	--	Portable charger to keep our DIGAPHOT full charged and operational.
Johnson Test Kit	3	Wm. B. Johnson & Assoc., Inc. Research Park Montville, NJ 67045		State I.D. # 30938, 30940, 30939	500, 5000, 50,000 CPM or 0.2, 2, 20 mR/hr	Items contained in the kits are as follows: (1) The DIG-5 is a high precision portable scaler/timer. (2) Model GSM-5 survey meter is a multi-purpose instrument with application and versatility for measuring radiation. The GSM-5 has a scintillation and proportional counting probe.
*Densitometer	1	RMI Quality Assurance in Radiology, Radiation Measurements, Inc.	175360 FEDS No.	211C-2074D		To determine the density of x-ray film in quality assurance determination studies/surveys.
*Sensitometer	1	3M	Process Control Sensitometer 175332 FEDS No.	02145		For use with UV and blue sensitive medical x-ray films. To test the sensitivity of x-ray film during a QA survey of facility.

Appendix VII

Iowa Emergency Plan

- A. Nuclear Power Plant Accident/Incident Plan:
Iowa Radiological Emergency Response Plan
- B. Annex E - Radioactive Material Transportation Emergency