

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**PROPOSED REVISION OF IOWA ADMINISTRATIVE CODE 567 - CHAPTER 133**  
**RULES FOR REMEDIAL ACTIONS BY RESPONSIBLE PARTIES**  
**8-10-12**

## **INTRODUCTION**

This document summarizes the rationale for the proposed rewrite of Chapter 133 of the Iowa Department of Natural Resources (Department) rules regarding cleanup of environmental contamination. The Department is proposing to rescind and replace all of the current Chapter 133 with the exception of the rule regarding compensation for damages to natural resources.

When the Department receives evidence of environmental contamination it is obligated to determine if the contamination poses an unacceptable risk to human health or the environment and, if it does, to require action to eliminate or minimize the risk. Absent specific criteria for making this determination, the response can be subject to the judgment of the regulators involved. This can result in inconsistent requirements for response actions and create uncertainty among the regulated public.

Evidence of contamination can come from a variety of sources such as an environmental assessment for a property transfer, a complaint from the public, a test report from a drinking-water sample, or the report of a spill of a hazardous material. Evidence of contamination is directed to the appropriate regulatory program for management in accordance with that program's rules. Specific regulatory programs that address contamination include the Department's Emergency Response, Underground Storage Tank, and Solid Waste programs and the federal RCRA program for management of hazardous waste. Evidence of contamination that is not under the purview of one of these programs is directed to the Department's Contaminated Sites Section or the regional Field Office and may be eligible for the federal CERCLA/Superfund program.

The Contaminated Sites Section and Field Offices have statutory authority for addressing non-program-specific contamination under Iowa Code Chapter 455B, division IV, part 4 involving hazardous conditions and Iowa Code Chapter 455E which addresses groundwater contamination. The authority under these statutes is extremely broad, but also extremely vague. Existing administrative rules are limited to Chapter 131, which addresses notification of a hazardous condition (defined only in general terms) and Chapter 133, which addresses only groundwater-related contamination. Iowa Code Chapter 455H and Chapter 137 of the Department's rules prescribe a state voluntary cleanup program (VCP) that is more defined and comprehensive, but is voluntary.

## **WHAT IS CHAPTER 133?**

The current Chapter 133 contains the Department's rules, mandated by the 1987 Groundwater Protection Act, involving cleanup of groundwater contamination. Chapter 133 requires investigation and cleanup of groundwater contamination by the party or parties responsible for the contamination. The current version of Chapter 133 loosely prescribes non-degradation and universal-cleanup groundwater-protection policies. That is, it has a goal of removing all

contaminants from groundwater if possible, or at least reducing contaminant concentrations to groundwater action levels. Groundwater actions levels are prescribed as being equal to or more stringent than drinking water standards. Chapter 133 has been the primary set of rules for regulation of site-related (i.e., point source) contamination that is not under the purview of another regulatory program.

### **WHY REWRITE CHAPTER 133?**

There has been no outcry for modifying Chapter 133. Heretofore the Department has exercised a practical approach in the enforcement of Chapter 133 that has largely avoided controversy. So why change?

A major deficiency with the existing Chapter 133 is that it is extremely vague. A strict interpretation of the chapter would classify a huge number of minor contamination situations as being problematic. The resulting uncertainty causes brownfield concerns (i.e., underutilized properties due to real or perceived contamination) and unnecessary expenditures on minor contamination. An objective of rewriting Chapter 133 is to greatly reduce this uncertainty.

Major changes are needed for Chapter 133 to accurately reflect current regulation of contaminated sites in Iowa. In 1995, the Iowa Supreme Court's decision entitled *Blue Chip Enterprises et al v. Iowa Department of Natural Resources*, 528 NW2d 619 (Blue Chip) redefined the liabilities of responsible parties and landowners in a manner that is inconsistent with how liability is currently prescribed in Chapter 133. In the early 1990s the federal Superfund program began emphasizing risks from exposure to contaminants in environmental media other than groundwater, especially soils and vapors, which are not addressed in the current Chapter 133.

Absent applicable standards from other programs; Chapter 137 (Iowa's VCP) standards for soil, vapors, and groundwater, which is not being used as drinking water, have become default standards for general use. A primary benefit of a VCP is the federal EPA's agreement to defer federal CERCLA/Superfund action at a site addressed in a state VCP. Therefore, standards were prescribed in Chapter 137 to satisfy EPA. The Department believes the resultant Chapter 137 requirements are sometimes more stringent than necessary. The Department is proposing that Chapter 133 be similar to the voluntary program prescribed in Chapter 137, but with less stringent and less formal requirements.

### **PROPOSED PRINCIPLES FOR CHAPTER 133**

- Adopt a risk-based approach to environmental cleanup in lieu of non-degradation or universal cleanup standards.
- Address forms of environmental contamination other than just groundwater.
- Be protective, but not excessively overprotective.
- Coordinate with the Iowa Department of Public Health to ensure protection of human health.

- Consider the likelihood and amount of potential exposure to contaminants, not just contaminant concentrations.
- Address conditions that currently exist or are reasonably anticipated in the foreseeable future in lieu of potential worst-case future conditions.
- Allow use of informal assurances that land use will not change, in lieu of formal land-use controls (e.g., environmental covenants) as required in Chapter 137.
- Prescribe specific criteria for determining problematic contamination.
- Provide objective means for addressing contamination, while allowing less stringent override based on professional judgment.
- Clearly define responsibilities consistent with the Iowa Supreme Court Blue Chip decision.
- Dismiss minor contributors of contamination.
- Require notification of potentially impacted parties.

## **PROS**

- Reduced uncertainty as to what is considered problematic contamination resulting in fewer sites where reuse and redevelopment is hindered (a.k.a. brownfield syndrome).
- Greater focus on more problematic sites by reducing the number of lesser sites labeled problematic.
- Increased transparency and consistency.
- Preventing overly stringent interpretation of the current Chapter 133 by EPA on CERCLA and RCRA sites in Iowa.

## **CONS**

- Perceived as being complicated due to the many factors involved and comprehensive nature.
- Perceived as being less protective of the environment due to less stringent standards.
- No means to cleanup problem sites provided without a viable responsible party.
- No proactive means to identify problem sites, which is currently the case in any event.