

CHAPTER 162
UNDERGROUND STORAGE TANKS
H.F. 643

AN ACT relating to the authority of the department of water, air and waste management over underground tanks for storage of regulated substances and petroleum products, and subjecting violators to civil and criminal penalties.

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

Section 1. NEW SECTION. 455B.461 DEFINITIONS.

As used in this part unless the context otherwise requires:

1. "Nonoperational storage tank" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.
2. "Operator" means a person in control of, or having responsibility for, the daily operation of the underground storage tank.
3. "Owner" means:
 - a. In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.
 - b. In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.
4. "Regulated substance" means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes substances designated in 40 C.F.R., Parts 61 and 116, and section 401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute). However, regulated substance does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be added or deleted as regulated substances by rule of the commission pursuant to 455B.464.
5. "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.
6. "Underground storage tank" means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. Underground storage tank does not include:
 - a. Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.
 - b. Tanks used for storing heating oil for consumptive use on the premises where stored.
 - c. Residential septic tanks.

d. Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985 (49 U.S.C. § 1671 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985 (49 U.S.C. § 2001 et seq.), or an intrastate pipeline facility regulated under chapter 479.

e. A surface impoundment, pit, pond, or lagoon.

f. A storm water or wastewater collection system.

g. A flow-through process tank.

h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

i. A storage tank situated in an underground area including, but not limited to, a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor. Underground storage tank does not include pipes connected to a tank described in paragraphs "a" to "i".

7. "Tank site" means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

Sec. 2. NEW SECTION. 455B.462 DECLARATION OF POLICY.

The general assembly finds that the release of regulated substances from underground storage tanks constitutes a threat to the public health and safety and to the natural resources of the state, and that existing regulatory programs of the department and other agencies do not adequately or appropriately address this substantial public concern.

Sec. 3. NEW SECTION. 455B.463 REPORT OF EXISTING TANKS.

1. Except as provided in subsection 2, the owner or operator of an underground storage tank existing on or before July 1, 1985, shall notify the department in writing by May 1, 1986, of the existence of each tank and specify the age, size, type, location and uses of the tank.

2. The owner of an underground storage tank taken out of operation between January 1, 1974 and July 1, 1985, shall notify the department in writing by July 1, 1986, of the existence of the tank unless the owner knows the tank has been removed from the ground. The notice shall specify to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator which brings into use an underground storage tank after July 1, 1985, shall notify the department in writing within thirty days of the existence of the tank and specify the age, size, type, location and uses of the tank.

4. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of five dollars for each tank included in the notice. A separate fund is created in the state treasury, the receipts of which are appropriated to pay the administrative expenses of the department incurred under this part. All fees collected by the department under this subsection shall be credited to the fund. The unobligated or unencumbered balance in the fund as of June 30 of each year shall be transferred to the hazardous waste remedial fund.

5. Subsections 1 to 3 do not apply to an underground storage tank for which notice was given pursuant to section 103, subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980.

6. A person who deposits a regulated substance in an underground storage tank shall notify the owner or operator in writing of their notification requirements pursuant to this section.

7. A person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of the tank in writing of the owner's notification requirements pursuant to this section.

Sec. 4. NEW SECTION. 455B.464 POWERS AND DUTIES OF COMMISSION.

The commission shall adopt rules pursuant to chapter 17A relating to:

1. Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include, but are not limited to, requirements for:

a. Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

b. Maintaining records of any monitoring or leak detection system, inventory control system, or tank testing or comparable system.

c. Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

d. Taking corrective action in response to a release or threatened release from an underground storage tank including appropriate testing of drinking water which may be contaminated by the release.

e. The closure of tanks to prevent any future release of a regulated substance into the environment.

f. Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to May 1, 1986. The commission shall adopt these rules not later than April 1, 1986, however, the effective date of the rules adopted shall be May 1, 1988. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted.

In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including, but not limited to, location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

2. The maintenance of evidence of financial responsibility as the executive director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

3. Standards of performance for new underground storage tanks which shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with A.S.T.M., standard G 57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after May 1, 1986. The commission shall adopt these rules not later than January 1, 1986, however, the effective date of the rules adopted shall be May 1, 1986. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted.

4. The form and content of the written notices required by section 455B.463.
5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the executive director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.
6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.
7. Designation of regulated substances subject to this part, consistent with section 455B.461, subsection 4. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the Federal Water Pollution Control Act [33 U.S.C. § 1321(b)(2)(A)], pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. § 9602], pursuant to section 307, subsection a of the federal Water Pollution Control Act [33 U.S.C. § 1317(a)], pursuant to section 112 of the Clean Air Act [42 U.S.C. § 7412], or pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. § 2606].

The rules adopted by the commission under this section shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in subsection 1, paragraph "f" and subsection 3, paragraph "d". It is the intent of the general assembly that state rules adopted pursuant to subsection 1, paragraph "f" and subsection 3, paragraph "d" be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

Sec. 5. NEW SECTION. 455B.465 POWERS AND DUTIES OF THE EXECUTIVE DIRECTOR.

The executive director shall:

1. Inspect and investigate the facilities and records of owners and operators of underground storage tanks as may be necessary to determine compliance with this part and the rules adopted pursuant to this part. An inspection or investigation shall be concluded subject to section 455B.103, subsection 8. For purposes of developing a rule, maintaining an accurate inventory or enforcing this part, the department may:

- a. Enter at reasonable times any establishment or other place where an underground storage tank is located.

- b. Inspect and obtain samples from any person of a regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

- (1) 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.

- (2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the executive director by a person that public disclosure of documents or information, or a particular part of the documents or information to which the executive director has access under this subsection would divulge commercial or financial information entitled to protection as 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.

2. Maintain an accurate inventory of underground storage tanks.

3. Take any action allowed by law which, in the executive director's judgment, is necessary to enforce or secure compliance with this part or any rule adopted under this part.

Sec. 6. NEW SECTION. 455B.466 VIOLATIONS.

1. If there is substantial evidence that a person has violated or is violating a provision of this part or a rule adopted under this part the executive director may issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 455B.109. The person to whom the order is issued may appeal the order to the commission as provided in chapter 17A. On appeal, the commission may affirm, modify or vacate the order of the executive director.

2. However, 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. The order is binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a district court.

3. The executive director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.467.

Sec. 7. NEW SECTION. 455B.467 PENALTIES — BURDEN OF PROOF.

1. A person who violates a provision of this part or a rule or order issued under this part is subject to a civil penalty not to exceed five thousand dollars for each day during which the violation continues. The civil penalty is an alternative to a criminal penalty provided under this part.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, plan or other document filed or required to be maintained under this part or who falsifies, tampers with or knowingly renders inaccurate a monitoring device or method required to be maintained under this part or by a rule or order issued under this part, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the executive director with approval of the commission, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this part or to obtain compliance with the provisions of this part or rules adopted or order issued under this part. In any action, previous findings of fact of the executive director or the commission after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of a provision of this part or a rule adopted or order issued by the commission, the burden of proof is upon the commission or the department.

5. 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.468 shall be raised in the legal proceedings instituted in accordance with this section.

Sec. 8. NEW SECTION. 455B.468 JUDICIAL REVIEW.

Except as provided in section 455B.467, subsection 5, judicial review of an order or other action of the commission or the executive director may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

Sec. 9. Sections 1 through 8 of this Act shall be codified as a new part of chapter 455B, division IV.

Approved May 22, 1985

CHAPTER 163
DRAINAGE AND DRAINAGE DISTRICTS
H.F. 678

AN ACT relating to drainage and drainage districts.

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

Section 1. Section 455.33, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Following its establishment, the drainage district is deemed to have acquired by permanent easement all right-of-way for drainage district ditches, tile lines, settling basins and other improvements, unless they are acquired by fee simple, in the dimensions shown on the survey and report made in compliance with sections 455.17 and 455.18 or as shown on the permanent survey, plat and profile, if one is made. The permanent easement includes the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement and inspection. The owner or lessee shall be reimbursed for any crop damages incurred in the maintenance, repair, improvement and inspection.

Sec. 2. Section 455.64, subsection 2, Code 1985, is amended to read as follows:

2. To pay such assessments in not less than ten nor more than twenty equal installments, the number to be fixed by the board and interest at the rate fixed by the board, not exceeding that permitted by chapter 74A. One such installment shall be payable at the September semiannual taxpaying date in each year; provided, however, that the county treasurer shall, at the September semiannual taxpaying date, require only the payment of a sufficient portion of the assessments to meet the interest and the amount maturing on bonds or certificates prior to the regular time for the payment of the second installment of taxes and the balance shall be collected with such second installment and without penalty. The first installment of each assessment, or the total amount if less than one hundred dollars is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer