CHAPTER 252

PETROLEUM UNDERGROUND AND ABOVEGROUND STORAGE TANKS

S.F. 362

AN ACT relating to petroleum underground and aboveground storage tanks by raising the maximum use taxes deposited in the Iowa comprehensive underground storage tank fund and adjusting the diminution cost factor, establishing monitoring certificates, requiring certain corrective action rules, defining free product, providing for double-walled tanks as a corrective action cost, providing for payment of corrective action costs for certain not-for-profit organizations, establishing requirements for site cleanup reports, changing copayment schedules for remedial action, extending property liens, limiting cleanup payments, extending loan maturity dates and offering a special interest rate buy-down, extending upgrade dates, offering insurance coverage for certified tank installers and for property transfers, limiting rights of recovery and subrogation under the insurance account, requiring certification and registration of groundwater professionals, imposing an environmental damage offset, making technical changes, and providing an effective date.

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

Section 1. Section 423.24, subsection 1, paragraph a, Code 1991, is amended to read as follows:

a. Twenty-five percent of all revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7, up to a maximum of three million eight hundred twenty-five thousand dollars per quarter, shall be deposited into the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes.

Sec. 2. Section 424.2, subsections 5, 9, and 12, Code 1991, are amended to read as follows:

5. "Depositor" means the person who deposits petroleum into a an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet.

9. "Owner or operator" means "owner or operator" of an underground storage tank as used in chapter 455G or the "owner" or "operator" of an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet.

12. "Tank" means an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet.

Sec. 3. Section 424.3, subsection 5, Code 1991, is amended to read as follows:

5. The cost factor is an amount per gallon of diminution determined by the board pursuant to this subsection. The board, after public hearing, ~~may~~ shall determine, or ~~may~~ shall adjust, the cost factor to the greater of either an amount reasonably calculated to generate an annual average revenue, year to year, of ~~twelve~~ fifteen million three hundred thousand dollars from the charge, excluding penalties and interest, ~~if any~~ or ten dollars. The board may determine or adjust the cost factor at any time ~~after May 5, 1989,~~ but shall at minimum determine the cost factor at least once each fiscal year.

Sec. 4. Section 455B.301, subsection 20, Code 1991, is amended to read as follows:

20. "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. However, this division does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal project. Solid waste does not include hazardous waste as defined in section 455B.411 or source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979, or petroleum contaminated soil which has been remediated to acceptable state or federal standards.

Sec. 5. Section 455B.474, subsection 1, paragraphs d and f, Code 1991, are amended by striking the paragraphs and inserting in lieu thereof the following:

d. Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(1) The classification system shall consider the actual or potential threat to public health and safety, and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(a) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(b) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(c) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(d) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(2) A site shall be classified as either high risk, low risk, or no action required.

(a) A site shall be considered high risk under any of the following conditions:

(i) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(iii) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(b) A site shall be considered low risk under any of the following conditions:

(i) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(ii) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(c) A site shall be considered no action required if contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(d) A site shall be reclassified as a site with a higher or lower classification when the site falls within a higher or lower classification as established under this subparagraph.

f. Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include, but not be limited to, all of the following:

(1) A requirement that the site cleanup report do all of the following:

(a) Identify the nature and level of contamination resulting from the release.

(b) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "d".

(c) Provide supporting data and a recommendation of the need for corrective action.

(d) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(2) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(3) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(4) High risk sites shall comply with corrective action standards.

(5) Low risk sites shall be monitored according to the following schedule:

(a) Up to three times per year from years one through three.

(b) Up to two times per year from years four through six.

(c) One time per year from years seven through nine.

(d) In the twelfth year the site shall be monitored one time. If there has been no significant increase in contamination or the contamination has not moved, the site shall be reclassified as a no action required site. If at any time the contamination has increased or moved by a significant amount, the site shall be monitored according to the previous higher monitoring schedule as established under this subparagraph.

(e) The department shall have the authority to order monitoring in addition to the requirements as specified in this subparagraph with approval by the board.

(f) If at any time monitoring indicates that contamination has fallen below action level standards, the site shall be reclassified as a no action required site.

(5A) No action required sites shall not be required to be remediated or monitored.

(6) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph, "bioremediation" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(7) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board approved tank system or methodology.

(8) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this paragraph are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(9) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this paragraph. Any order taken by the director pursuant to this subparagraph shall be reviewed at the next meeting of the environmental protection commission.

Sec. 6. Section 455B.474, subsection 1, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. Issuance of a monitoring certificate for sites classified as low risk pursuant to paragraph "f". A monitoring certificate shall be valid until the site is reclassified as a no action required site. A site which has been issued a monitoring certificate shall not be eligible to receive a clean site certificate under section 455B.304, subsection 15, until the site is reclassified as a no risk site.

Sec. 7. Section 455G.1, subsection 2, unnumbered paragraph 1, Code 1991, is amended to read as follows:

This chapter applies to a petroleum underground storage ~~tank~~ tanks for which an owner or operator is required to maintain proof of financial responsibility under federal or state law, from the effective date of the regulation of the federal environmental protection agency governing that tank, and not from the effective compliance date, unless the effective compliance date of the regulation is the effective date of the regulation. An owner or operator of a petroleum underground storage tank required by federal or state law to maintain proof of financial responsibility for that underground storage tank, ~~or who will be required on a date definite~~, is subject to this chapter and chapter 424.

Sec. 8. Section 455G.1, subsection 2, paragraph b, subparagraph (1), Code 1991, is amended by striking the subparagraph and inserting in lieu thereof the following:

(1) Underground storage tank systems not in operation on or after the applicable compliance date.

Sec. 9. Section 455G.2, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. "Claimant" means an owner or operator who has received assistance under the remedial account or who has coverage under the insurance account with respect to a release, or an installer or inspector who has coverage under the insurance account.

NEW SUBSECTION. 3B. "Community remediation" means a program of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or federal law.

Sec. 10. Section 455G.2, subsection 4, Code 1991, is amended to read as follows:

4. "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare ~~an assessment plan~~ a site cleanup report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by ~~an assessment plan~~ a site cleanup report.

Sec. 11. Section 455G.2, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 6A. "Free product" means a regulated substance that is present as a nonaqueous phase liquid.

NEW SUBSECTION. 11A. "Potentially responsible party" means a person who may be responsible or liable for a release for which the fund has made payments for corrective action or third-party liability.

NEW SUBSECTION. 12A. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing from an underground storage tank into groundwater, surface water, or subsurface soils.

Sec. 12. Section 455G.2, subsection 15, unnumbered paragraph 2, Code 1991, is amended by striking the unnumbered paragraph.

Sec. 13. Section 455G.4, subsection 3, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

Sec. 14. Section 455G.9, subsection 1, paragraph a, subparagraph (1), Code 1991, is amended to read as follows:

(1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release for a small business under this subparagraph, the remedial program shall pay ~~no more than the lesser of twenty-five thousand dollars or one-third of the total costs of corrective action for that release,~~ in accordance with subsection 4 ~~notwithstanding~~. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

~~Total payments for claims pursuant to this subparagraph are limited to no more than eight million dollars. Claims for eligible retroactive releases shall be prorated if claims filed in a permitted application period or for a particular priority class of applicants exceed eight million dollars or the then remaining balance of eight million dollars. If claims remain partially or totally unpaid after total payments equal eight million dollars, all remaining claims are void, and no entitlement exists for further payment.~~

Sec. 15. Section 455G.9, subsection 1, paragraph a, subparagraph (2), Code 1991, is amended to read as follows:

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

Sec. 16. Section 455G.9, subsection 1, paragraph a, subparagraph (3), unnumbered paragraph 1, Code 1991, is amended to read as follows:

Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1985, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release for a small business under this subparagraph, the remedial program shall pay ~~no more than the lesser of twenty-five thousand dollars or one-third of the total costs of corrective action for that release,~~ in accordance with subsection 4 ~~notwithstanding~~. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for

that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

Sec. 17. Section 455G.9, subsection 1, paragraph a, Code 1991, is amended by adding the following new subparagraphs:

NEW SUBPARAGRAPH. (4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

NEW SUBPARAGRAPH. (5) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph "f", subparagraph (7). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

NEW SUBPARAGRAPH. (6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph "f", but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph "a".

Sec. 18. Section 455G.9, subsection 1, paragraphs b, c, and d, Code 1991, are amended to read as follows:

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d. One hundred percent of the costs of corrective action and third party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

Sec. 19. Section 455G.9, subsection 1, Code 1991, is amended by adding the following new paragraphs:

NEW PARAGRAPH. g. One hundred percent of the costs up to twenty thousand dollars incurred by the board under section 455G.12A, subsection 2, unnumbered paragraph 2, for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments under section 455G.9, subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

NEW PARAGRAPH. h. Corrective action for the costs of a release under all of the following conditions:

(1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since January 1, 1974.

(3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(4) The release was reported to the board by July 1, 1991.

Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

NEW PARAGRAPH. i. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

Sec. 20. Section 455G.9, subsection 4, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

4. MINIMUM COPAYMENT SCHEDULE.

a. An owner or operator who reports a release to the department of natural resources after May 5, 1989, and on or before October 26, 1990, shall be required to pay the following copayment amounts:

(1) If a site's total anticipated expenses are not reserved for more than, or actual expenses do not exceed eighty thousand dollars, the owner or operator shall pay the greater of five thousand dollars or eighteen percent of the total costs of corrective action for that release.

(2) If a site's total anticipated expenses are reserved for more than, or actual expenses exceed eighty thousand dollars, the owner or operator shall pay the amount as designated in subparagraph (1) plus thirty-five percent of the total costs of the corrective action for that release which exceed eighty thousand dollars.

b. The remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

Sec. 21. Section 455G.9, subsection 6, unnumbered paragraph 1, Code 1991, is amended to read as follows:

If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ~~five~~ ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

Sec. 22. Section 455G.9, subsection 7, Code 1991, is amended to read as follows:

7. RECURRING RELEASES TREATED AS A NEWLY REPORTED RELEASE. A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to ~~an assessment plan~~ a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the ~~assessment plan~~ site cleanup report or in addition to the work actually performed.

Sec. 23. Section 455G.9, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 8. EXPENSES OF CLEANUP NOT REQUIRED. When an owner or operator who is eligible for benefits under this chapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup.

Sec. 24. Section 455G.9, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 9. OWNER OR OPERATOR DEFINED. For purposes of receiving benefits under this section, "owner or operator" means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

NEW SUBSECTION. 10. For a self-insured as determined under IAC 567-136.6, to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met.

Sec. 25. Section 455G.10, subsection 6, Code 1991, is amended to read as follows:

6. The maturity for each financial assistance package made by the board pursuant to this chapter shall be the shortest feasible term commensurate with the repayment ability of the small business borrower. However, the maturity date of a loan shall not exceed ~~ten~~ twenty years and the guarantee is ineffective beyond the agreed term of the guarantee or ~~ten~~ twenty years from initiation of the guarantee, whichever term is shorter.

Sec. 26. Section 455G.11, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. To the extent that coverage under this section includes third-party liability, third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

Sec. 27. Section 455G.11, subsection 3, paragraph c, Code 1991, is amended to read as follows:

c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before October 26, ~~1992~~ 1993, provided that prior to the provision of insurance account coverage, the tank site tests release free. For a tank qualifying for insurance coverage pursuant to this paragraph at the time of application or renewal, the owner or operator shall pay a per tank premium equal to two times the normally scheduled premium for a tank satisfying paragraph "a" or "b". An owner or operator who fails to comply as certified to the board on or before October 26, ~~1992~~ 1993, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b".

Sec. 28. Section 455G.11, subsection 6, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

6. INSTALLER'S AND INSPECTOR'S INSURANCE COVERAGE.

a. Coverage. The board shall offer insurance coverage under the fund's insurance account to installers and inspectors of certified underground storage tank installations within the state for an environmental hazard arising in connection with a certified installation as provided in this subsection. Coverage shall be limited to environmental hazard coverage for both corrective action and third-party liability for a certified tank installation within the state in connection with a release from that tank.

b. Annual premiums. The annual premium shall be:

(1) For the year July 1, 1991, through June 30, 1992, two hundred dollars per insured tank.

(2) For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per insured tank.

(3) For the year July 1, 1993, through June 30, 1994, three hundred dollars per insured tank.

(4) For subsequent years, installers and inspectors shall pay an annually adjusted insurance premium to maintain coverage on each tank previously installed or newly insured by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. The premium paid shall be fully earned and is not subject to refund or cancellation. If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

(5) The board may offer coverage at rates based on sales if the qualifying installer or inspector cannot be rated on a per tank basis, or if the work the installer or inspector performs involves more than tank installation. The rates to develop premiums shall be based on the premium charged per tank under subparagraphs (1), (2), and (3).

c. Limits of coverage available. Installers and inspectors may purchase coverage up to one million dollars per occurrence and two million dollars aggregate, subject to the terms and conditions under this section and those adopted by the board.

d. Deductible. The insurance account may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

e. Excess coverage. Installers and inspectors may purchase excess coverage of up to five million dollars upon such terms and conditions as determined by the board.

f. Certification of tank installations. The board shall adopt certification rules requiring certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer or inspector. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be

personally inspected by an independent licensed engineer, local fire marshal, state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, installer or inspector, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector may be an owner or operator of a tank, or an employee of an owner, operator, or installer.

Sec. 29. Section 455G.11, subsection 7, Code 1991, is amended to read as follows:

7. COVERAGE ALTERNATIVES. The board shall provide for insurance coverage to be offered to installers and inspectors for a tank installation certified pursuant to subsection 6, through ~~at least one~~ both of the following methods:

a. Directly through the fund with premiums and deductibles as provided ~~for owners and operators~~ in subsection 4 6.

b. In cooperation with a private insurance carrier with excess or stop loss coverage provided by the fund to reduce the cost of insurance to such installers or inspectors, and including such other terms and conditions as the board deems necessary and convenient to provide adequate coverage for a certified tank installation at a reasonable premium. An installer or inspector obtaining insurance coverage pursuant to this paragraph, may purchase excess coverage of up to five million dollars, subject to the terms and conditions as determined by the board.

The insurance coverage offered pursuant to this subsection shall, at a minimum, cover environmental hazards for both corrective action and third-party liability.

Sec. 30. Section 455G.11, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 10. PROPERTY TRANSFER INSURANCE.

a. Additional cleanup requirements. An owner, operator, landowner, or financial institution may purchase insurance coverage under the insurance account to cover environmental damage caused by a tank in the event that governmental action requires additional cleanup beyond action level standards in effect at the time a certificate of clean was issued under section 455B.304, subsection 15, or a monitoring certificate was issued under section 455B.474, subsection 1, paragraph "h".

b. Eligibility for coverage. An owner, operator, landowner, or financial institution, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance account to provide proof of financial responsibility if the following conditions are satisfied:

(1) A certificate of clean has been issued for the site under section 455B.304, subsection 15, or a monitoring certificate has been issued for the site under section 455B.474, subsection 1, paragraph "h". Property transfer coverage shall be effective on a monitored site only for the time period for which monitoring is allowed as specified in the monitoring certificate. A site which has not been issued a certificate of clean or a monitoring certificate shall not be eligible for property transfer coverage.

(2) The tank location is not covered by other environmental hazard liability insurance coverage, or is eligible for remedial benefits as provided under section 455G.9.

(3) The environmental damage is not caused by a new release.

(4) The additional cleanup is required to meet new corrective action level standards mandated by governmental action.

c. Premiums. The annual premium for insurance coverage shall be two hundred fifty dollars per party, per location, with an overall limit of liability per site of five hundred thousand dollars. The premiums are fully earned. Each party purchasing coverage at that site will have the total limit of liability prorated over the total limit among the policies issued, so as to avoid stacking beyond the total coverage limit of five hundred thousand dollars. If coverage is purchased for any part of a year, the purchaser shall pay the full annual premium.

After June 30, 1994, an owner, operator, landowner, or financial institution applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis.

d. Coverage exclusions. Property transfer insurance coverage offered under this subsection does not include coverage of the following:

(1) Third-party liability.

(2) Cleanup beyond the actual costs associated with the site.

(3) Loss of use of the property and other economic damages.

(4) Costs associated with additional remediation required by a voluntary change in usage of the site.

(5) Cleanup costs for additional corrective action required due to the spread of contamination on a site which has been issued a monitoring certificate.

e. Annual monitoring. Annual monitoring is required, for any site for which coverage is purchased. Failure to comply with monitoring as prescribed by the board will invalidate insurance coverage under this subsection. For a site which has been issued a monitoring certificate, the annual monitoring requirements imposed under this paragraph shall be satisfied by the annual monitoring requirements imposed under the corrective action rules for a site which is allowed to monitor in place.

f. Transfer of coverage. Coverage may be transferred upon payment of a transfer fee.

g. Rules. The board shall adopt rules pursuant to chapter 17A as necessary to implement this subsection.

h. Federal approval. Property transfer insurance coverage issued under this subsection is conditioned upon continued approval by the United States environmental protection agency of the state's underground storage tank program.

Sec. 31. Section 455G.12A, subsection 2, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The board shall have authority to contract for site cleanup reports. The board's responsibility for site cleanup reports is limited to those site cleanup reports subject to approval by the department of natural resources and required in connection with the remediation of a release which is eligible for benefits under section 455G.9. The site cleanup report shall address existing and available remedial technologies and the costs associated with the use of each technology. The board shall not have the authority to affect a contract which has been given written approval under section 455G.12A.

Sec. 32. Section 455G.12A, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 4. PRIOR APPROVAL BY ADMINISTRATOR. Unless emergency conditions exist, a contractor performing services pursuant to this section shall have the budget for the work approved by the administrator prior to commencement of the work. No expense incurred which is above the budgeted amount shall be paid unless the administrator approves such expense prior to it being incurred. All invoices or bills shall be submitted with appropriate documentation as deemed necessary by the board, no later than thirty days after the work has been performed. Neither the board nor an owner or operator is responsible for payment for work incurred which has not been previously approved by the board.

Sec. 33. Section 455G.13, subsections 1, 6, 8, and 9 and subsection 10, unnumbered paragraph 1, Code 1991, are amended to read as follows:

1. FULL RECOVERY SOUGHT FROM OWNER. The board shall seek full recovery from the owner, ~~or~~ operator ~~of the tank which~~, or other potentially responsible party liable for the released ~~the~~ petroleum ~~and~~ which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs; ~~or~~ including reasonable attorney fees and costs of litigation for which moneys are expended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. JOINDER OF PARTIES. The department of natural resources has standing in any case or contested action related to the fund or a tank to assert any claim that the department may have regarding the tank at issue in the case or contested action, ~~and~~ upon motion and sufficient showing by a party to a cost recovery or subrogation action provided for under this

section, the court or the administrative law judge shall join to the action any ~~person~~ potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section.

8. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD, PROCEEDINGS AGAINST RESPONSIBLE PARTY. An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the remedial account for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable. Any such provision is null and void and of no force or effect.

9. LATER PROCEEDINGS PERMITTED AGAINST OTHER PARTIES. The entry of judgment against a party to the action does not bar a future action by the board or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Notwithstanding section 668.5 no other potentially responsible party may seek contribution or any other recovery from an owner or operator eligible for assistance under the remedial account for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

Payment ~~of a claim~~ by the fund for corrective action or third-party liability pursuant to this chapter shall be conditioned upon the board's acquiring by subrogation the rights of the claimant to recover ~~those costs and expenditures for corrective action for which the fund has compensated the claimant, from the person responsible or liable for the unauthorized release~~ payment from any potentially responsible party. A claimant is precluded from receiving double compensation for the same injury.

Sec. 34. Section 455G.13, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. RECOVERY OR SUBROGATION — INSTALLERS AND INSPECTORS. Notwithstanding any other provision contained in this chapter, the board or a person insured under the insurance account has no right of recovery or right of subrogation against an installer or an inspector insured by the fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

Sec. 35. Section 455G.13, subsection 10, Code 1991, is amended to read as follows:

10. ~~SUBROGATION RIGHTS~~ CLAIMS AGAINST POTENTIALLY RESPONSIBLE PARTIES. ~~Payment~~ Upon payment of a claim by the fund pursuant to this chapter, ~~shall be conditioned upon the board's acquiring by subrogation~~ the rights of the claimant to recover those costs and expenditures for corrective action for which the fund has compensated the claimant, from ~~the person responsible or liable for the unauthorized release~~ any potentially responsible party, are assumed by the board to the extent paid by the fund. A claimant is precluded from receiving double compensation for the same injury.

In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

Sec. 36. Section 455G.13, subsection 10, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A claimant may elect to permit the board to pursue the claimant's cause of action for any injury not compensated by the fund against any potentially responsible party, provided the attorney general determines such representation would

not be a conflict of interest. If a claimant so elects, the board's litigation expenses shall be shared on a pro rata basis with the claimant, but the claimant's share of litigation expenses are payable exclusively from any share of the settlement or judgment payable to the claimant.

Sec. 37. Section 455G.16, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Third-party liability expenses under this section specifically exclude any claim, cause of action, or suit, for personal injury including, but not limited to loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

Sec. 38. Section 455G.17, subsection 3, Code 1991, is amended to read as follows:

3. The board shall adopt approved curricula for training persons to install underground storage tanks in such a manner that the resulting installation may be certified under section 455G.11, subsection 6, and provide fire safety and environmental protection guidelines for persons removing tanks.

Sec. 39. Section 455G.17, subsection 4, Code 1991, is amended by striking the subsection.

Sec. 40. NEW SECTION. 455G.17A GROUNDWATER PROFESSIONALS — REGISTRATION.

1. The department of natural resources shall adopt rules pursuant to chapter 17A requiring that groundwater professionals register with the department of natural resources.

2. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

a. A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.

b. A professional engineer registered in Iowa.

c. A professional geologist certified by a national organization.

d. Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences as of the effective date of this Act.

e. Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(1) Possession of a bachelor's degree from an accredited college.

(2) Five years of related professional experience.

3. The department of natural resources may provide for a civil penalty of no more than fifty dollars for the failure to register. An interested person may obtain a list of registrants from the department of natural resources. The department of natural resources may impose a fee for the registration of persons under this section.

4. The registration of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of groundwater professionals registered pursuant to this section.

Sec. 41. NEW SECTION. 455G.18 ENVIRONMENTAL DAMAGE OFFSET.

1. The fund's payment of a remedial claim by an owner or operator reporting a release under section 455G.9, subsection 1, paragraph "a", subparagraph (2), shall be subject to an environmental damage offset if the owner or operator closed or removed the tank and did not replace it. An owner or operator who has declared bankruptcy shall not be subject to the offset. A site which is not being used for commercial purposes is not subject to the offset unless offered for sale. If a site is exempt under this subsection from the offset, but is later subject to the lien imposed under section 455G.13, subsection 5, the amount of the lien shall include the amount of the offset which would have been imposed if the site was not exempt during remediation.

2. The offset shall be equal to the average annual environmental protection charge on diminution imposed under chapter 424 which would be paid for tanks of similar size. The offset shall be based on the rate of diminution presently in force, regardless of the date on which the tank was closed. The offset shall apply to the release which is still subject to remedial fund payments under section 455G.9.

3. Offsets under this section shall be credited to cost recovery enforcement proceeds under section 455G.8, subsection 5.

4. The board shall adopt rules as necessary and convenient for the implementation and administration of the offset.

Sec. 42. Notwithstanding any limitations on division or department full-time equivalent positions in any enacted legislation, the department of natural resources may utilize funding, other than general fund moneys, to employ up to 4.00 additional full-time equivalent positions to work on the underground storage tank program for the fiscal year beginning July 1, 1991, and ending June 30, 1992.

Sec. 43. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved June 10, 1991

CHAPTER 253

ENERGY EFFICIENCY

S.F. 508

AN ACT relating to energy efficiency by expanding the entities entitled to financial assistance for implementing energy conservation measures, requiring implementation of life cycle cost analyses and providing exemptions from the implementation requirements, requiring the appropriation of abandoned utility refunds and deposits, establishing energy efficiency standards for certain products and establishing various energy efficiency-related programs and projects.

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

Section 1. Section 18.115, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. Of all new passenger vehicles and light pickup trucks purchased by the state vehicle dispatcher, institutions under the control of the state board of regents, community colleges, and any other state agency purchasing such new vehicles and trucks, beginning July 1, 1992, a minimum of five percent, and beginning July 1, 1994, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion including but not limited to those propelled by flexible fuels, compressed natural gas, propane, solar energy, or electricity. For the purpose of this subsection, "flexible fuels" means fuels which are blended with eighty-five percent ethanol and fifteen percent gasoline. The provisions of this subsection do not apply to such vehicles and trucks purchased for the following purposes: law enforcement, off-road maintenance work, or work vehicles used to pull loaded trailers. This subsection also does not apply to school corporations, with the exceptions of those designated above. It is the intent of the general assembly that the members of the midwest energy compact promote the development and purchase of motor vehicles equipped with engines which utilize alternative methods of propulsion.

Sec. 2. Section 93.11, subsection 1, paragraph d, Code 1991, is amended to read as follows:

d. Unless prohibited by the conditions applying to a settlement, the petroleum overcharge moneys in the energy conservation trust may be used for the payment of attorney fees and