

the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information, as the board in its sole discretion believes would aid the investigation or resolution of the matter.

Sec. 8. Sections 536A.32, 536A.33, and 536A.34, Code 2007, are repealed.

Approved May 24, 2007

CHAPTER 171

UNDERGROUND STORAGE TANK REGULATION

S.F. 499

AN ACT relating to regulation of underground storage tanks by the department of natural resources, making appropriations, and providing contingent effective date provisions.

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

Section 1. Section 455B.474, subsection 1, paragraph b, Code 2007, is amended to read as follows:

b. Maintaining records of any monitoring or leak detection system, inventory control system, ~~or tank testing or comparable system,~~ and periodic underground storage tank facility compliance inspections conducted by inspectors certified by the department.

Sec. 2. Section 455B.474, subsection 1, paragraph h, subparagraph (3), Code 2007, is amended to read as follows:

(3) A certificate ~~may shall~~ be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this paragraph "h" or a subsequent purchaser of the site shall not be required to perform further corrective action solely because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.

Sec. 3. Section 455B.474, subsection 1, Code 2007, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. Establishing a certified compliance inspector program administered by the department for underground storage tank facility compliance inspections.

(1) The certified compliance inspector program shall provide for, but not be limited to, all of the following:

(a) Mandatory periodic underground storage tank facility compliance inspections by owners and operators using inspectors certified by the department.

(b) Compliance inspector qualifications, certification procedures, certification and renewal fees sufficient to cover administrative costs, continuing education requirements, inspector discipline standards including certification suspension and revocation for good cause, compliance inspection standards, professional liability bonding or insurance requirements, and any other requirements as the commission may deem appropriate. Certification and renewal fees received by the department are appropriated to the department for purposes of the administration of the certified compliance inspector program.

(2) The department shall continue to conduct independent inspections as provided in sec-

tion 455B.475 as deemed appropriate to assure effective compliance and enforcement and for the purpose of auditing the accuracy and completeness of inspections conducted by certified compliance inspectors.

(3) Acts or omissions by a certified compliance inspector, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions, rules, or regulations arising out of the certification, inspections, or duties imposed by this section shall not be cause for a claim against the state or the department within the meaning of chapter 669 or any other provision of the Iowa Code.

Sec. 4. Section 455B.474, subsection 1, paragraph d, subparagraph (2), subparagraph subdivision (e), Code 2007, is amended to read as follows:

(e) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site. However, if the report is found to be inaccurate or incomplete, and if based upon information in the report the risk classification of the site cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately classify the site. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under this section 455G.18.

Sec. 5. Section 455B.474, subsection 1, paragraph f, subparagraph (5), Code 2007, is amended to read as follows:

(5) A corrective action design report submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if the corrective action design report is found to be inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately determine the corrective action response requirements. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in an improper or incorrect corrective action response shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under this section 455G.18.

Sec. 6. Section 455B.474, Code 2007, is amended by adding the following new subsections:
NEW SUBSECTION. 8. Requirements as may be necessary to maintain state program approval and which are consistent with applicable provisions of the federal Energy Policy Act of 2005, Pub. L. No. 109-58, Title XV, Subtitle B, Underground Storage Tank Compliance, as codified in 42 U.S.C. § 6991 et seq.

a. The commission shall adopt rules establishing a training program applicable to owners and operators of underground storage tanks. The rules may include provisions for department certification of operators, self-certification by owners and operators, education and training requirements, owner requirements to assure operator qualifications, and assessment of education, training, and certification fees. The rules shall be consistent with and sufficient to comply with the operator training requirements as provided in 42 U.S.C. 6991i, guidance adopted pursuant to that provision by the administrator of the United States environmental protection agency, and state program approval requirements under 42 U.S.C. 6991i(b).

b. The commission shall adopt rules related to the prohibition on the delivery of regulated substances consistent with and sufficient to comply with the provisions of 42 U.S.C. 6991k,

guidance adopted by the administrator of the United States Environmental Protection Agency pursuant to that provision, and state program approval requirements under 42 U.S.C. 6991k(a)(3).

c. The commission shall adopt rules applicable to secondary containment requirements consistent with and sufficient to comply with the provisions of Pub. L. 109-58, Title XV, section 1530(a), as codified at 42 U.S.C. 6991b(i)(1), and guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision. Each new underground storage tank or piping connected to any such new tank installed after the effective date of this section of this Act, or any existing underground storage tank or existing piping connected to such existing underground storage tank that is replaced after August 1, 2007, shall be secondarily contained if the installation is within one thousand feet of any existing community water system or any existing potable drinking water well as provided in Pub. L. 109-58, Title XV, section 1530(a), as codified at 42 U.S.C. § 6991b(i)(1) and in guidance adopted by the United States environmental protection agency pursuant to that provision. Rules adopted under this paragraph shall not amend or modify the secondary containment requirements in subsection 1, paragraph "f", subparagraph (9).

NEW SUBSECTION. 9. a. Groundwater professionals shall be certified. The commission shall adopt rules pursuant to chapter 17A for such certifications, and the rules shall include provisions for certification suspension or revocation for good cause.

b. 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:

(1) 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.

(2) A professional engineer licensed in Iowa.

(3) A professional geologist certified by a national organization.

(4) Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences.

(5) 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:

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

(b) Five years of related professional experience.

c. The department of natural resources may provide for a civil penalty of no more than fifty dollars for failure to obtain certification. An interested person may obtain a list of certified groundwater professionals from the department of natural resources. The department may impose and retain a fee for the certification of persons under this subsection sufficient to cover the costs of administration.

d. The certification 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 a groundwater professional certified pursuant to this subsection.

e. A person who requests certification under this subsection shall be required to attend a course of instruction and pass a certification examination. An applicant who successfully passes the examination shall be certified as a groundwater professional.

f. All groundwater professionals shall be required to complete continuing education requirements as adopted by rule by the commission.

g. The commission may provide for exemption from the certification requirements of this subsection and rules adopted hereunder for a professional engineer licensed pursuant to chapter 542B, if the person is qualified in the field of geotechnical, hydrological, environmental groundwater, or hydrogeological engineering.

h. Notwithstanding the certification requirements of this subsection, a site cleanup report or corrective action design report submitted by a certified groundwater professional shall be

accepted by the department in accordance with subsection 1, paragraph “d”, subparagraph (2), subparagraph subdivision (e), and paragraph “f”, subparagraph (5).

NEW SUBSECTION. 10. Requirements that persons and companies performing or providing services for underground storage tank installations, installation inspections, testing, permanent closure of underground storage tanks by removal or filling in place, and other closure activities as defined by rules adopted by the commission be certified by the department. This provision does not apply to persons performing services in their official capacity and as authorized by the state fire marshal’s office or fire departments of political subdivisions of the state. The rules adopted by the commission shall include all of the following:

a. Establishing separate certification criteria applicable to underground storage tank installers and installation inspectors, underground storage tank testers, and persons conducting underground storage tank closure activities as required by commission rules.

b. Establishing minimum qualifications for certification including but not limited to considerations based on education, character, professional ethics, experience, manufacturer or other private agency certification, training and apprenticeship, and field demonstration of competence. The rules may provide for exemption from education, experience, and training requirements for a licensed engineer for whom underground storage tank installation is within the scope of their license and practice but shall require compliance with other certification requirements.

c. Requiring a written examination developed and administered by the department or by some other qualified public or private entity identified by the department. The department may contract with a public or private entity to administer the department’s examination or a department approved third party examination. The examination shall, at a minimum, be sufficient to establish knowledge of all applicable underground storage tank rules adopted under this section, private industry standards, federal standards, and other applicable standards adopted by the Iowa fire marshal’s office pursuant to chapter 101.

d. Providing for a minimum two-year renewable certification period. A person may apply for a combined certificate applicable to underground storage tank installer and installer inspector certification, tester certification, and closure certification.

e. Providing that certificate holders obtain and provide proof of financial responsibility for environmental liability with minimum liability limits of one million dollars per occurrence and in the aggregate. The rules may provide exemptions where the certificate holder is employed by the owner or operator of the underground storage tank system and the underground storage tank system is covered by a financial responsibility mechanism under subsection 2.

f. Providing criteria for the department to take disciplinary action including issuance of warnings, reprimands, suspension and probation, and revocation. Any certificate holder subject to suspension or revocation shall be entitled to notice and an opportunity for an evidentiary hearing as provided in section 17A.18.

g. Providing for certification reciprocity between states upon demonstration that the out of state certification criteria is substantially equivalent to rules adopted by the commission.

h. Providing for assessment of fees sufficient to cover the costs of administration of the certification program. A separate fee may be established for persons applying for a combination of installer and installer inspector, testing, or closure certifications. Fees received by the department pursuant to this subsection are appropriated to the department for purposes of the administration of activities under this subsection.

i. Notwithstanding subsection 7, the commission may adopt rules requiring that all underground storage tank installations, installation inspections, testing, and closure activities be conducted by persons certified in accordance with this subsection.

j. Acts or omissions of a person certified under this subsection, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions including department onsite supervision of certified activities, rules, or regulations arising out of the certification, shall not be cause for a claim against the state or the department within the meaning of chapter 669 or any other provision of the Code.

Sec. 7. Section 455G.9, subsection 1, paragraph k, Code 2007, is amended by striking the paragraph and inserting in lieu thereof the following:

k. Pursuant to an agreement between the board and the department of natural resources, assessment and corrective action arising out of releases at sites for which a no further action certificate has been issued pursuant to section 455B.474, when the department determines that an unreasonable risk to public health and safety may still exist. At a minimum, the agreement shall address eligible costs, contracting for services, and conditions under which sites may be reevaluated.

Sec. 8. Section 455G.9, subsection 1, Code 2007, is amended by adding the following new paragraph:

NEW PARAGRAPH. 1. Costs for the permanent closure of an underground storage tank system that was in place on the date an eligible claim was submitted under paragraph "a". Reimbursement is limited to costs approved by the board prior to the closure activities.

Sec. 9. Section 455H.105, subsection 5, Code 2007, is amended to read as follows:

5. Adopt rules establishing requirements for the submission, performance, and verification of site assessments, cleanup plans, and certifications of completion. The rules shall provide that all site assessments, cleanup plans, and certifications of completion submitted by a participant shall be prepared by or under the supervision of an appropriately trained professional, including a groundwater professional certified pursuant to section 455G.18 455B.474.

Sec. 10. TRANSITIONAL PROVISIONS.

1. Not later than August 1, 2007, the environmental protection commission shall adopt administrative rules previously adopted by the Iowa comprehensive petroleum underground storage tank fund board pursuant to section 455G.17 in existence on the effective date of this Act by emergency rulemaking pursuant to section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b". The rules shall become effective immediately upon filing or on a later effective date specified in the rules. Any rules adopted in accordance with the provisions of this section shall also be published as notice of intended action as provided in section 17A.4.

2. Following the adoption of emergency rules, the commission shall commence rulemaking procedures for the administration of section 455B.474, subsection 10.

3. Any registration or certification issued pursuant to section 455G.17 shall continue in full force and effect until expiration or renewal.

Sec. 11. Section 455G.17, Code 2007, is repealed.

Sec. 12. Section 455G.18, Code 2007, is repealed.

Sec. 13. CONTINGENT EFFECTIVE DATE. The section of this Act repealing section 455G.17, shall take effect upon the Code editor's receipt of notice from the environmental protection commission stating that emergency rules required under the section of this Act relating to transitional provisions have taken effect.

Approved May 24, 2007