CHAPTER 1112

AGRICULTURAL CHEMICALS

S.F. 446

AN ACT relating to agricultural chemicals, by regulating the use of chemicals in irrigation distribution systems, providing for fees, providing for penalties, and providing for an effective date and date of applicability.

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

Section 1. Section 206.2, Code Supplement 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 30. "Chemigation" means the application of a chemical to land or plants, if the chemical is injected into water used in an irrigation distribution system as provided in rules adopted by the department.

Sec. 2. Section 206.5, subsection 6, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

6. A commercial, private, or public applicator shall not apply a pesticide as part of chemigation without first complying with the certification requirements of section 206A.5. The applicator shall pay the certification fee required in section 206A.5 in addition to the fee required in this section.

Sec. 3. Section 206.22, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A penalty imposed pursuant to this section shall be in addition to and not in lieu of any penalty which may be imposed upon a person pursuant to section 206A.11.

Sec. 4. NEW SECTION. 206A.1 DEFINITIONS.

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

1. "Applicator" means a person applying chemicals by chemigation.

2. "Chemical" means a fertilizer as defined in section 200.3 or a pesticide or plant growth regulator as defined in section 206.2.

3. "Chemigation" means the application of a chemical to land or plants, if the pesticide is injected into water used in an irrigation distribution system as provided in rules adopted by the department.

4. "Chemigation permit" means a permit issued by the department authorizing a person to apply a chemical to land or plants, if the chemical is injected into water used in an irrigation distribution system. A chemigation permit includes a permit or a renewal of a permit as provided in section 206A.2.

5. "Commercial applicator" means the same as defined in section 206.2.

6. "Farming" means the same as defined in section 172C.1.

7. "Injection location" means a site where a chemical is applied through an irrigation distribution system.

8. "Irrigation distribution system" means a mechanism containing a conduit, including but not limited to a hose or pipe, which connects directly to a water source of groundwater or surface water through which water is drawn and applied for purposes of farming.

10. "Permit holder" means the person issued a permit pursuant to section 206A.2.

11. "Pesticide" means the same as defined in section 206.2.

12. "Restricted use pesticide" means the same as defined in section 206.2.

Sec. 5. NEW SECTION. 206A.2 CHEMIGATION PERMIT.

1. Land shall not be subject to chemigation, unless a chemigation permit is issued by the department. The permit shall be issued to the titleholder of the land or the person responsible for the day-to-day management of the land. The chemigation permit shall expire one year from the date of its issuance. A person shall not install a new injection location unless the

injection location is subject to a chemigation permit. The department shall establish procedures for the review and approval of applications for chemigation permits. The department may approve an application for a new permit only upon inspection of the irrigation distribution system. The department may approve an application and issue a chemigation permit, if the irrigation distribution system complies with the requirements of this chapter, and the applicator is certified pursuant to section 206A.5. The department must approve or disapprove the application in a timely manner but not later than ninety days after the application is filed. The department shall disapprove an application for good cause as provided in subsection 4.

2. The department shall publish and distribute forms for applications for chemigation permits. The rules shall specify information required to be contained in the application. An application shall be submitted according to procedures which shall be adopted by the department. An application shall at least include all of the following:

a. The name and address of the person seeking the permit.

b. The location of land subject to chemigation.

c. A description of the irrigation distribution system and information regarding each injection location.

d. The name of each chemical to be injected in the chemigation process.

3. The department shall deny an application for a chemigation permit, and shall suspend or revoke a chemigation permit, for good cause. As used in this section, "good cause" means that the department has evidence of any of the following:

a. The applicant committed fraud or deceit in seeking to obtain a chemigation permit.

b. The applicant or permit holder refused an inspection pursuant to section 206A.3.

c. The permit holder has authorized an applicator to inject a chemical within an irrigation distribution system, if the applicator was not certified pursuant to section 206A.5.

d. Land described in an application or subject to a permit has been applied with a chemical in violation of this chapter.

e. The permit holder failed to post a notice warning the public that a chemical was applied in an irrigation distribution system pursuant to section 206A.6.

f. A report of contamination or suspected contamination was not filed by the permit holder or an applicator pursuant to section 206A.7.

g. The permit holder failed to comply with a plan of cleanup or recovery as provided in section 206A.7.

4. The department shall establish fees for reviewing applications and renewing permits. The fee for reviewing an application for a chemigation permit shall not exceed ninety dollars. The fee for renewing a chemigation permit shall not exceed seventy-five dollars. The fees shall be deposited into the chemigation fund established pursuant to section 206A.10.

5. A permit shall be conditioned upon the right of the department to inspect the land subject to chemigation and the irrigation distribution system pursuant to section 206A.3.

Sec. 6. NEW SECTION. 206A.3 INSPECTIONS.

1. The department shall conduct areawide, selective, and periodic inspections of irrigation distribution systems used for chemigation in order to ensure compliance with this chapter or rules adopted by the department pursuant to this chapter. The department shall inspect land which the department believes has been subjected to chemigation in violation of this chapter. The department shall make reasonable efforts to obtain consent from the titleholder of the land, permit holder, or an authorized representative, including a person responsible for managing the day-to-day operations of the land. The district court in Polk county or in the county where the land is located shall upon probable cause issue a search warrant to the department to carry out the inspection. The department may be issued a warrant before or after making reasonable efforts to obtain consent for an inspection. The department is not required to obtain consent or be issued a warrant if emergency conditions require immediate action by the department.

2. A person shall not refuse entry or access to the department as a condition of an inspection under this section, if the person is presented with appropriate credentials and a search warrant. A person shall not obstruct, interfere, or hamper with the inspection.

3. Upon request, the department shall provide a report of the inspection to the titleholder, permit holder, or authorized representative. The report shall detail findings of the department relating to compliance with this chapter.

4. The entry by the department upon land subject to an inspection as provided by this section shall not be considered to be trespass and damages shall not be recoverable based on the entry or damage to crops caused by the inspection.

Sec. 7. NEW SECTION. 206A.4 IRRIGATION DISTRIBUTION SYSTEMS.

1. The department shall establish, by rule, requirements, procedures, and standards relating to the operation of irrigation distribution systems to prevent the contamination of water supplies caused by chemigation. The rules shall specify the types of equipment used in irrigation distribution systems and design standards for such equipment. The department may establish different standards for different irrigation distribution systems. The rules shall provide for the installation, operation, and maintenance of irrigation pipes. The rules shall also provide for the installation, operation, and maintenance of equipment serving the following purposes:

a. To check the performance of the system.

b. To ensure that chemicals drain away from a source water supply.

c. To monitor the injection of chemicals into an irrigation distribution system.

d. To protect a water supply from contamination.

2. The rules adopted under this section shall not impose an unduly severe burden on a person without substantially contributing to the prevention of water contamination.

Sec. 8. NEW SECTION. 206A.5 CHEMIGATION APPLICATOR CERTIFICATION REQUIREMENTS.

1. An applicator shall choose between a one-year certification for which the applicator shall pay a seventy-five dollar fee or a three-year certification for which the applicator shall pay a two hundred twenty-five dollar fee. Fees collected pursuant to this section shall be deposited into the chemigation fund. The applicator shall pay the certification fee required in this section in addition to any fee required in section 206.5.

2. The applicator shall be examined prior to initial certification. In addition, the applicator shall be reexamined every three years following initial certification before the applicator is eligible for a renewal of certification. The department shall adopt, by rule, requirements for the examination, reexamination, and certification of applicants. Examinations and reexaminations under this chapter shall be held in conjunction with those required pursuant to section 206.5. The secretary shall also adopt by rule, the criteria for allowing the selection of a written or oral examination by a person requiring certification.

3. The department may suspend or revoke a certificate issued under this section, if an applicator does any of the following:

a. Applies chemicals by chemigation in violation of section 206A.4.

b. Applies chemicals by chemigation by use of equipment or a device that the applicator knows is defective, if such use violates requirements of this chapter, including rules adopted by the department.

c. Fails to report contamination of a water supply as provided in section 206A.7 which results from chemigation, if the contamination is known to the applicator, or should have been known to an applicator trained to perform similar functions.

d. Violates a provision of this chapter or rule adopted by the department pursuant to this chapter.

Sec. 9. NEW SECTION. 206A.6 NOTICE OF CHEMICAL USE REQUIRED.

A permit holder shall post a notice warning the public that chemicals are applied in an irrigation distribution system, and that land is being applied with chemicals by means of

chemigation. The notice shall name any restricted use pesticide applied in the irrigation distribution system. The notice shall be posted on the land subject to chemigation in a manner and according to procedures adopted by departmental rule.

Sec. 10. NEW SECTION. 206A.7 CONTAMINATION REPORT.

A permit holder or an applicator certified pursuant to section 206A.5 shall report an actual or suspected case of contamination related to the use of chemigation on land serviced by an irrigation distribution system. The report shall be made promptly to the department according to rules which shall be adopted by the department. The department shall initiate an investigation of the report within forty-eight hours of the report. The department shall take all actions necessary to protect the public. The department shall establish a plan of cleanup and recovery. The plan shall be carried out by the permit holder under the supervision of the department.

Sec. 11. NEW SECTION. 206A.7A EXCEPTIONS — ENCLOSED FACILITIES.

Sections 206A.2 and 206A.5 shall not apply to a person otherwise required to obtain a permit or be certified, to the extent that the person is a titleholder of land enclosed within a facility serviced by an irrigation distribution system, is responsible for the day-to-day management of the facility, or is an applicator within the facility.

Sec. 12. NEW SECTION. 206A.8 COOPERATION BY OTHER AGENCIES.

The department of natural resources shall cooperate with the department of agriculture and land stewardship in adopting rules required pursuant to this chapter. The department of natural resources shall also cooperate with the department of agriculture and land stewardship in enforcing provisions of this chapter and rules adopted pursuant to this chapter.

Sec. 13. NEW SECTION. 206A.9 REMEDIES — DISCIPLINARY ACTION AND INJUNCTIVE RELIEF.

1. The department may initiate disciplinary action against a person under this section by doing any of the following:

a. Referring any case of a violation pursuant to this chapter to the county attorney in the county where the violation occurs or to the attorney general.

b. Suspending or revoking a chemigation permit issued pursuant to section 206A.2.

c. Suspending or revoking a certificate issued pursuant to section 206A.5.

The department shall not initiate disciplinary action until the department provides at least ten days' notice to a person of a violation committed by the person. The notice shall be delivered by personal service or by certified mail. Acceptance of the notice does not constitute evidence of a violation. The department shall make every reasonable effort to obtain voluntary compliance.

The county attorney may initiate a prosecution under this section regardless of notice received by the department. If the county attorney does not initiate prosecution within thirty days after receiving the department's referral, the department shall notify the attorney general who shall initiate the prosecution. Voluntary compliance shall not preclude the department, a county attorney, or the attorney general from carrying out disciplinary action under this section.

2. Prosecution may be waived, if the waiver is conditioned upon compliance by the violator with a schedule for curing the violation. The schedule must be approved by the department and by the county attorney or attorney general if one of them has been asked to prosecute the case. If the violation is cured pursuant to the schedule, no prosecution shall be initiated based on that violation.

3. The department may bring an action in district court in the county where a violation is occurring to enjoin a person from actions which may threaten the public safety. The department, acting as petitioner in the action, shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, that irreparable damage or injury will result if the action is brought at law, or that unique or special circumstances exist.

Sec. 14. NEW SECTION. 206A.10 CHEMIGATION FUND.

1. A chemigation fund is created in the state treasury under the control of the secretary. The fund is composed of moneys deposited from the following sources:

a. Collected and dedicated to the fund under this chapter, including fees dedicated to the fund pursuant to section 206A.2 and 206A.5.

b. Appropriated to the fund by the general assembly.

c. Accepted for deposit into the fund by the secretary from the United States, other states in the union, foreign nations, state agencies, political subdivisions, and private sources.

2. Moneys deposited into the fund shall be used to administer and enforce this chapter.

3. Moneys in the fund shall be subject to an annual audit by the auditor of state. The fund shall be subject to warrants by the director of revenue and finance, drawn upon the written requisition of the secretary or an authorized representative of the secretary.

4. All interest earned on proceeds in the fund shall remain in the fund. Section 8.33 does not apply to moneys in the fund.

Sec. 15. NEW SECTION. 206A.11 PENALTIES.

1. a. A person required to obtain a chemigation permit pursuant to section 206A.2 who fails to obtain or retain the permit is subject to a civil penalty not to exceed two hundred fifty dollars.

b. A person who applies chemicals without obtaining or retaining a certification as required pursuant to section 206A.5 is subject to a civil penalty not to exceed two hundred fifty dollars.

c. A person who willfully tampers with or destroys equipment required pursuant to section 206A.4 used to protect water supplies from chemigation is subject to a civil penalty not to exceed three hundred dollars, if the tampering or destruction causes contamination or threatens to cause contamination of a water supply.

d. A person who fails to report contamination or suspected contamination of a water supply as required pursuant to section 206A.7 is subject to a civil penalty not to exceed one thousand dollars.

e. A person who fails to erect a notice or destroy a notice as required pursuant to section 206A.6 is subject to a civil penalty not to exceed one hundred dollars.

f. A person who fails to file a report required in section 206A.7 is subject to a civil penalty not to exceed one hundred dollars.

2. Each day that a violation continues constitutes a separate offense. The department shall not consider a day that an offense continues as a separate violation if the offense is beyond the control of the person to cure.

3. Moneys collected from civil penalties shall be deposited into the general fund of the state.

4. The penalties provided in this section are separate and cumulative. The penalties are in addition to and not in lieu of penalties imposed by provisions in other chapters, including chapter 206.

Sec. 16. EFFECTIVE DATE AND DATE OF APPLICABILITY.

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

2. The department of agriculture and land stewardship shall adopt rules to administer this Act as soon as practicable.

3. A person is not required to comply with this Act until on and after January 1, 1994. A person may apply for a permit and become certified before January 1, 1994.

Approved April 22, 1992