

MAR 15 1985

HOUSE FILE 643

Place On Calendar

BY COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

(Formerly House Study Bill 217)

Passed House, Date 3-26-85 (p. 1094) Passed Senate, Date 4-19-85 (P. 1517)

Vote: Ayes 75 Nays 18 Vote: Ayes 33 Nays 10

Approved May 22, 1985

Motion to reconsider
Reconsidered & Repassed 3-27-85 (p. 1108)
73-17

A BILL FOR

1 An Act relating to the authority of the department of water, air
2 and waste management over underground tanks for storage of
3 regulated substances and petroleum products, and subjecting
4 violators to civil and criminal penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 643

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

2 As used in this part unless the context otherwise requires:

3 1. "Nonoperational storage tank" means an underground
4 storage tank in which regulated substances will not be
5 deposited or from which regulated substances will not be
6 dispensed after July 1, 1985.

7 2. "Operator" means a person in control of, or having
8 responsibility for, the daily operation of the underground
9 storage tank.

10 3. "Owner" means:

11 a. In the case of an underground storage tank in use on or
12 after July 1, 1985, a person who owns the underground storage
13 tank used for the storage, use, or dispensing of regulated
14 substances.

15 b. In the case of an underground storage tank in use
16 before July 1, 1985, but no longer in use on that date, a
17 person who owned the tank immediately before the
18 discontinuation of its use.

19 4. "Regulated substance" means an element, compound,
20 mixture, solution or substance which, when released into the
21 environment, may present substantial danger to the public
22 health or welfare or the environment. Regulated substance
23 includes substances designated in 40 C.F.R., Parts 61 and 116,
24 and section 401.15, and petroleum including crude oil or any
25 fraction of crude oil which is liquid at standard conditions
26 of temperature and pressure (sixty degrees Fahrenheit and
27 fourteen and seven-tenths pounds per square inch absolute).
28 However, regulated substance does not include a substance
29 regulated as a hazardous waste under the Resource Conservation
30 and Recovery Act of 1976. Substances may be added or deleted
31 as regulated substances by rule of the commission pursuant to
32 455B.464.

33 5. "Release" means spilling, leaking, emitting,
34 discharging, escaping, leaching, or disposing from an
35 underground storage tank into ground water, surface water, or

1 subsurface soils.

2 6. "Underground storage tank" means one or a combination
3 of tanks, including underground pipes connected to the tanks
4 which are used to contain an accumulation of regulated
5 substances and the volume of which, including the volume of
6 the underground pipes, is ten percent or more beneath the
7 surface of the ground. Underground storage tank does not
8 include:

9 a. Farm or residential tanks of one thousand one hundred
10 gallons or less capacity used for storing motor fuel for
11 noncommercial purposes.

12 b. Tanks used for storing heating oil for consumptive use
13 on the premises where stored.

14 c. Residential septic tanks.

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

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

22 f. A storm water or wastewater collection system.

23 g. A flow-through process tank.

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

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

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

33 The general assembly finds that the release of regulated
34 substances from underground storage tanks constitutes a threat
35 to the public health and safety and to the natural resources

1 of the state, and that existing regulatory programs of the
2 department and other agencies do not adequately or
3 appropriately address this substantial public concern.

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

5 1. The owner or operator of an underground storage tank
6 existing on or before July 1, 1985, shall notify the
7 department in writing by May 1, 1986, of the existence of each
8 tank and specify the age, size, type, location and uses of the
9 tank.

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

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

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

35 5. Subsections 1 to 3 do not apply to an underground

1 storage tank for which notice was given pursuant to section
2 103, subsection c, of the Comprehensive Environmental
3 Response, Compensation and Liabilities Act of 1980.

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

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

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

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

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

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

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

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

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

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

3445 1 f. A sufficient number of water wells to adequately
2 monitor the quality of water in the saturated zone beneath the
3 ground surface adjacent to the sites of underground storage
4 tanks which have been installed ten years or more. The owner
5 or operator of an underground storage tank which has been
6 installed for ten years before July 1, 1986, shall install at
7 least two water wells adjacent to the tank site not later than
8 July 1, 1989. The owner or operator of an underground storage
9 tank which has been installed for ten years during the fiscal
10 year beginning July 1, 1986, or during any succeeding fiscal
11 year shall install at least two water wells adjacent to the
12 tank site not later than three years from July 1 of the fiscal
13 year following the fiscal year in which the underground
14 storage tank has been installed ten years. At least one water
15 well shall be installed to intersect the water saturated zone
16 before the water reaches the underground storage tank site and
17 at least one water well shall be installed to intersect the
18 water saturated zone after the water leaves the underground
19 storage tank site. However, if the owner presents
20 satisfactory evidence to the department that the saturated
21 zone lies below forty feet beneath the ground surface in the
22 area adjacent to the tank site or if drilling demonstrates
23 that the saturated zone is more than forty feet beneath the
24 ground surface in the area adjacent to the tank site, the
25 wells must be drilled only to at least two feet below the
26 depth of the deepest tank at the tank site.

27 In adopting the rules under this subsection, the commission
28 may distinguish between types, classes, and ages of
29 underground storage tanks. In making the distinctions, the
30 commission may take into consideration factors including, but
31 not limited to, location of the tanks, soil and climate
32 conditions, uses of the tanks, history of maintenance, age of
33 the tanks, current industry recommended practices, national
34 consensus codes, hydrogeology, water table, size of the tanks,
35 quantity of regulated substances periodically deposited in or

1 dispensed from the tank, the technical and managerial
2 capability of the owners and operators, and the compatibility
3 of the regulated substance and the materials of which the
4 underground storage tank is fabricated.

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

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

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

35 c. The total liability of a guarantor shall be limited to

1 the aggregate amount which the guarantor has provided as
2 evidence of financial responsibility to the owner or operator
3 under this subsection. This subsection does not limit any
4 other state or federal statutory, contractual, or common law
5 liability of a guarantor to its owner or operator including,
6 but not limited to, the liability of the guarantor for bad
7 faith in negotiating or in failing to negotiate the settlement
8 of any claim. This subsection does not diminish the liability
9 of any person under section 107 or 111 of the Comprehensive
10 Environmental Response, Compensation and Liability Act of 1980
11 or other applicable law.

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

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

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

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

31 c. The material used in the construction or lining of the
32 tank is compatible with the substance to be stored. If soil
33 tests conducted in accordance with A.S.T.M., standard G 57-78
34 or another standard approved by the commission show that soil
35 resistivity in an installation location is twelve thousand

1 ohm/cm or more (unless a more stringent soil resistivity
2 standard is adopted by rule of the commission), a storage tank
3 without corrosion protection may be installed in that location
4 until the effective date of the standards adopted by the
5 commission and after January 1, 1986.

3445 6 d. A sufficient number of water wells to adequately
7 monitor the quality of water in the saturated zone beneath the
8 ground surface adjacent to the underground storage tank sites.
9 The water wells shall be drilled into the water saturated zone
10 beneath ground surface. At least one water well shall be
11 installed to intersect the water saturated zone before the
12 water reaches the underground storage tank site and at least
13 one water well shall be installed to intersect the water
14 saturated zone after the water leaves the underground storage
15 tank site. However, if the owner presents satisfactory
16 evidence to the department that the saturated zone lies below
17 forty feet beneath the ground surface in the area adjacent to
18 the tank site or if drilling demonstrates that the saturated
19 zone is more than forty feet beneath the ground surface in the
20 area adjacent to the tank site, the wells must be drilled only
21 to at least two feet below the depth of the deepest tank at
22 the tank site.

23 4. The form and content of the written notices required by
24 section 455B.463.

25 5. The duties of owners or operators of underground
26 storage tanks to locate and abate the source of release of
27 regulated substances, when in the judgment of the executive
28 director, the local hydrology, geology and other relevant
29 factors reasonably include a tank as a potential source.

30 6. Reporting requirements necessary to enable the
31 department to maintain an accurate inventory of underground
32 storage tanks.

33 7. Designation of regulated substances subject to this
34 part, consistent with section 455B.461, subsection 4. The
35 rules shall be at least as stringent as the regulations of the

1 federal government pursuant to section 311, subsection b,
2 paragraph 2, subparagraph A of the Federal Water Pollution
3 Control Act [33 U.S.C. § 1321(b)(2)(A)], pursuant to section
4 102 of the Comprehensive Environmental Response, Compensation,
5 and Liability Act [42 U.S.C. § 9602], pursuant to section 307,
6 subsection a of the federal Water Pollution Control Act [33
7 U.S.C. § 1317(a)], pursuant to section 112 of the Clean Air
8 Act [42 U.S.C. § 7412], or pursuant to section 7 of the Toxic
9 Substances Control Act [15 U.S.C. § 2606].

10 The rules adopted by the commission under this section
11 shall be consistent with federal regulations relating to the
12 regulation of underground storage tanks except for the water
13 well requirements under subsection 1, paragraph "f".

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

16 The executive director shall:

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

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

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

31 (1) If the executive director obtains a sample, prior to
32 leaving the premises, the executive director shall give the
33 owner, operator, or agent in charge a receipt describing the
34 sample obtained and if requested a portion of each sample
35 equal in volume or weight to the portion retained. If the

1 sample is analyzed, a copy of the results of the analysis
2 shall be furnished promptly to the owner, operator, or agent
3 in charge.

4 (2) Documents or information obtained from a person under
5 this subsection shall be available to the public except as
6 provided in this subparagraph. Upon a showing satisfactory to
7 the executive director by a person that public disclosure of
8 documents or information, or a particular part of the
9 documents or information to which the executive director has
10 access under this subsection would divulge commercial or
11 financial information entitled to protection as a trade
12 secret, the executive director shall consider the documents or
13 information or the particular portion of the documents or
14 information confidential. However, the document or
15 information may be disclosed to officers, employees or
16 authorized representatives of the United States charged with
17 implementing the federal Solid Waste Disposal Act, to
18 employees of the state of Iowa or of other states when the
19 document or information is relevant to the discharge of their
20 official duties, and when relevant in any proceeding under the
21 federal Solid Waste Disposal Act or this part.

22 2. Maintain an accurate inventory of underground storage
23 tanks.

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

34427
27 Sec. 6. NEW SECTION. 455B.466 VIOLATIONS.

28 1. If there is substantial evidence that a person has
29 violated or is violating a provision of this part or a rule
30 adopted under this part the executive director may issue an
31 order directing the person to desist in the practice which
32 constitutes the violation, and to take corrective action as
33 necessary to ensure that the violation will cease, and may
34 impose appropriate administrative penalties pursuant to
35 section 455B.109. The person to whom the order is issued may

1 appeal the order to the commission as provided in chapter 17A.
2 On appeal, the commission may affirm, modify or vacate the
3 order of the executive director.

4 2. However, if it is determined by the executive director
5 that an emergency exists respecting any matter affecting or
6 likely to affect the public health, the executive director may
7 issue any order necessary to terminate the emergency without
8 notice and without hearing. The order is binding and
9 effective immediately and until the order is modified or
10 vacated at a hearing before the commission or by a district
11 court.

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

15 Sec. 7. NEW SECTION. 455B.467 PENALTIES -- BURDEN OF
16 PROOF.

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

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

30 3. The attorney general, at the request of the executive
31 director with approval of the commission, shall institute any
32 legal proceedings, including an action for an injunction,
33 necessary to enforce the penalty provisions of this part or to
34 obtain compliance with the provisions of this part or rules
35 adopted or order issued under this part. In any action,

1 previous findings of fact of the executive director or the
2 commission after notice and hearing are conclusive if
3 supported by substantial evidence in the record when the
4 record is viewed as a whole.

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

9 5. If the attorney general has instituted legal
10 proceedings in accordance with this section, all related
11 issues which could otherwise be raised by the alleged violator
12 in a proceeding for judicial review under section 455B.468
13 shall be raised in the legal proceedings instituted in
14 accordance with this section.

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

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

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

25 EXPLANATION

26 This bill provides regulatory authority for the department
27 of water, air and waste management over underground tanks used
28 to store regulated substances and liquid petroleum products to
29 prevent and abate releases into the environment. The bill
30 provides notification requirements for owners, operators,
31 sellers and depositors of underground storage tanks. The bill
32 directs the commission to adopt rules relating to monitoring
33 wells, detection, prevention and correction, financial
34 responsibility, standards of performance for new tanks, notice
35 requirements, duties of owners to locate and abate releases,

1 reporting requirements, and designations of regulated
2 substances.

3 This bill provides civil and criminal penalties for
4 violations of its requirements. The civil penalty is not to
5 exceed five thousand dollars for each day of violation and the
6 criminal penalty is an aggravated misdemeanor punishable by
7 imprisonment for not to exceed two years or a fine not to
8 exceed five thousand dollars, or both the fine and
9 imprisonment.

10 This bill will be codified as a new part of chapter 455B,
11 division IV.

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HOUSE FILE 643

H-3459

1 Amend the amendment, H-3442, to House File 643 as
2 follows:

3 1. Page 1, by striking lines 2 through 14 and
4 inserting the following:

5 "_____. Page 2, by inserting after line 31 the
6 following:

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

A 11 2. Page 3, line 5, by striking the word "The" and
12 inserting the following: "Except as provided in
13 subsection 2, the".

14 3. Page 5, line 31, by inserting after the word
15 "tanks," the following: "compatibility of a tank
16 material with the".

17 4. Page 6, line 1, by inserting after the word
18 "tank," the following: "the degree of risk presented
19 by the regulated substance,".

20 5. Page 9, line 11, by inserting after the word
21 "with" the following: "and shall not exceed the
22 requirements of".

B 23 6. Page 9, line 13, by striking the words and
24 figure "subsection 1, paragraph "f"" and inserting the
25 following: "subsection 3, paragraph "d"".

BY OSTERBERG of Linn

HUMMEL of Benton

HARBOR of Mills

H-3459 FILED MARCH 26, 1985

DIVISION A - ADOPTED, DIVISION B - WITHDRAWN (p. 1089)

HOUSE FILE 643

H-3462

1 Amend amendment H-3442 to House File 643 as follows:
2 1. Page 1, by inserting after line 14, the following:

3 "_____. Page 9, line 13, by inserting after the
4 letter "f" the following: "and subsection 3, paragraph
5 "d"."

H-3462 FILED MARCH 26, 1985 BY OSTERBERG of Linn
ADOPTED (p. 1089)

HOUSE FILE 643

H-3487

1 Amend House File 643 as follows:

2 1. Page 2, line 25, by striking the word "as" and
3 inserting the word "gas".

H-3487 FILED MARCH 27, 1985 BY OSTERBERG of Linn
ADOPTED BY UNANIMOUS CONSENT (p. 1108)

H-3442

1 Amend House File 643 as follows:

3459 2 1. Page 10, by inserting after line 26 the
3 following:

4 "Sec. ____ . NEW SECTION. 455B.466 REGISTRATION OF
5 UNDERGROUND STORAGE TANK INSTALLERS.

6 It is unlawful for a person to install an
7 underground storage tank unless the person registers
8 annually as an underground storage tank installer with
9 the department and pays an annual registration fee of
10 ten dollars. The registration fee shall be credited
11 to the fund created under section 455B.463. The
12 registration shall include the name and address of the
13 applicant and other information required by rule of
14 the commission."

3460 15 2. By renumbering sections as necessary.

H-3442 FILED MARCH 25, 1985 BY OSTERBERG of Linn

*Adopted as amended by 3459A - 3462
3/26 (p. 1096)*

HOUSE FILE 643

H-3445

1 Amend House File 643 as follows:

2 1. Page 5, by striking lines 1 through 26 and
3 inserting in lieu thereof the following:

4 "f. Requiring the placement of observation wells
5 at all existing underground tank locations when inventory
6 control systems are not properly maintained or where
7 there are reasonable grounds for the department to
8 suspect a tank leakage."

3465 9 2. Page 8, by striking lines 6 through 22 and
10 inserting in lieu thereof the following: "Two obser-
11 vation wells, at least four inches in diameter, shall
12 be installed adjacent to each tank extending two feet
13 below the bottom of the excavation. In any permeable
14 soil where the bottom of the excavation is above the
15 ground water level there shall be an impervious
16 layer of concrete or other material, approved by the
17 department, sloped to drain to the observation wells."

H-3445 FILED MARCH 25, 1985 BY WELDEN of Hardin

*A- Lost 2/26 (p. 1086)
B- Lost (p. 1088)*

HOUSE FILE 643

H-3455

1 Amend amendment H-3445 to House File 643 as
2 follows:

3 1. Page 1, by striking lines 15 through 17 and
4 inserting in lieu thereof the following: "ground
5 water level there shall be a four inch pipe section
6 connecting to the observation wells at the end of each
7 tank and the pipe shall have two-hundredths inch
8 maximum slotted openings."

H-3455 FILED MARCH 26, 1985 BY WELDEN of Hardin

ADOPTED (p. 1087)

HOUSE FILE 643
REVISED FISCAL NOTE

REQUESTED BY REPRESENTATIVE OSTERBERG

In compliance with a written request received March 26, 1985, a fiscal note for HOUSE FILE 643 REVISED is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 643 provides regulatory authority for the Department of Water, Air and Waste Management over underground tanks used to store regulated substances and liquid petroleum products to prevent and abate releases into the environment. The bill requires the owner or operator of an underground storage tank to notify the Department in writing. A fee of five dollars for each storage tank must accompany the notice. All the fees collected by the Department shall be credited to a special fund created in the state treasury. Moneys from the fund shall be appropriated to pay the administrative expenses incurred by the Department as a result of this bill.

The bill directs the Water, Air and Waste Management Commission to adopt rules relating to monitoring wells, detection, prevention and correction, financial responsibility, standards of performance for new tanks, notice requirements, duties of owners to locate and abate releases, reporting requirements, and designation of regulated substances. The bill provides civil and criminal penalties for violations of its requirements.

ASSUMPTIONS:

1. Estimates on the number of underground storage tanks in Iowa vary between 40,000 and 250,000. The registration fee and expenditure estimates given in the table below are based on the Department of Water, Air and Waste Management's estimate that 61,000 underground storage tanks would be registered in fiscal year 1986 and 1000 tanks would be registered in subsequent years.
2. In fiscal year 1986, the additional staff needed would include 1 Systems Analyst for data processing and 1 Clerk to handle registration, records and correspondence. Data processing and additional support costs would total \$25,000.
3. In subsequent years, a part time Clerk (.25 FTE) would be needed to handle registration of new tanks. Other expenses would include data processing (\$4,000) and additional support (\$3,000).

FISCAL EFFECT: The estimated fee receipts and expenditures incurred in fiscal year 1986 and fiscal year 1987, based on the assumptions listed above, are as follows:

	FY 1986	FY 1987
Registration Fee Receipts	\$ 305,000	\$ 5,000
LESS: Salaries	\$ 43,000	\$ 4,000
Support	25,000	\$ 7,000
Subtotal	<u>\$ 68,000</u>	<u>\$ 11,000</u>
NET EFFECT	\$ 237,000	\$ (6,000)
	=====	=====

PAGE FIVE, MARCH 27, 1985

HOUSE CLIP SHEET

Page Two, Fiscal Note, House File 643-REVISED

The Department of Water, Air and Waste Management estimates that a comprehensive enforcement program would involve additional costs of approximately \$205,000. This estimate includes \$162,000 for 6 Environmental Specialists to conduct inspections, \$13,000 for travel and \$50,000 for support.

Source: Department of Water, Air and Waste Management

(LSB 1835H.3, RLB)

FILED MARCH 26, 1985

BY DENNIS PROUTY, FISCAL DIRECTOR

ENERGY & ENVIRONMENT: Gronstal, Chair: Carr and Soorholtz

Amend (3709) & No Pass 4/11/85 (p. 1330)

HOUSE FILE 643

BY COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

(As Amended and Passed by the House March 27, 1985)

Passed House, Date See Below Passed Senate, Date 4-19-85 (p. 1517)

Vote: Ayes _____ Nays _____ Vote: Ayes 33 Nays 10

Approved May 22, 1985

A BILL FOR

1 An Act relating to the authority of the department of water, air
2 and waste management over underground tanks for storage of
3 regulated substances and petroleum products, and subjecting
4 violators to civil and criminal penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

6 Conference Committee Appointed 4-29-85
7 *Representative Osterberg (Chair), Black, Jay, Mullins, Paulin (p. 2021)*
8 *Senators Hutchins (Chair), Gronstal, Bruner, Holden, Jerez (p. 1735)*
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House Amendments _____

Passed a/w Conference Committee Report

House - 5-1-85 (p. 2109) *Senate 5-1-85 (p. 1861)*
89-7 *41-1*

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

2 As used in this part unless the context otherwise requires:

3 1. "Nonoperational storage tank" means an underground
4 storage tank in which regulated substances will not be
5 deposited or from which regulated substances will not be
6 dispensed after July 1, 1985.

7 2. "Operator" means a person in control of, or having
8 responsibility for, the daily operation of the underground
9 storage tank.

10 3. "Owner" means:

11 a. In the case of an underground storage tank in use on or
12 after July 1, 1985, a person who owns the underground storage
13 tank used for the storage, use, or dispensing of regulated
14 substances.

15 b. In the case of an underground storage tank in use
16 before July 1, 1985, but no longer in use on that date, a
17 person who owned the tank immediately before the
18 discontinuation of its use.

19 4. "Regulated substance" means an element, compound,
20 mixture, solution or substance which, when released into the
21 environment, may present substantial danger to the public
22 health or welfare or the environment. Regulated substance
23 includes substances designated in 40 C.F.R., Parts 61 and 116,
24 and section 401.15, and petroleum including crude oil or any
25 fraction of crude oil which is liquid at standard conditions
26 of temperature and pressure (sixty degrees Fahrenheit and
27 fourteen and seven-tenths pounds per square inch absolute).
28 However, regulated substance does not include a substance
29 regulated as a hazardous waste under the Resource Conservation
30 and Recovery Act of 1976. Substances may be added or deleted
31 as regulated substances by rule of the commission pursuant to
32 455B.464.

33 5. "Release" means spilling, leaking, emitting,
34 discharging, escaping, leaching, or disposing from an
35 underground storage tank into ground water, surface water, or

1 subsurface soils.

2 6. "Underground storage tank" means one or a combination
3 of tanks, including underground pipes connected to the tanks
4 which are used to contain an accumulation of regulated
5 substances and the volume of which, including the volume of
6 the underground pipes, is ten percent or more beneath the
7 surface of the ground. Underground storage tank does not
8 include:

9 a. Farm or residential tanks of one thousand one hundred
10 gallons or less capacity used for storing motor fuel for
11 noncommercial purposes.

12 b. Tanks used for storing heating oil for consumptive use
13 on the premises where stored.

14 c. Residential septic tanks.

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

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

22 f. A storm water or wastewater collection system.

23 g. A flow-through process tank.

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

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

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

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

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

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

8 1. Except as provided in subsection 2, the owner or
9 operator of an underground storage tank existing on or before
10 July 1, 1985, shall notify the department in writing by May 1,
11 1986, of the existence of each tank and specify the age, size,
12 type, location and uses of the tank.

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

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

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

1 of June 30 of each year shall be transferred to the hazardous
2 waste remedial fund.

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

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

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

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

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

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

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

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

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

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

1 contaminated by the release.

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

3704 f. A sufficient number of water wells to adequately
5 monitor the quality of water in the saturated zone beneath the
6 ground surface adjacent to the sites of underground storage
7 tanks which have been installed ten years or more. The owner
8 or operator of an underground storage tank which has been
9 installed for ten years before July 1, 1986, shall install at
10 least two water wells adjacent to the tank site not later than
11 July 1, 1989. The owner or operator of an underground storage
12 tank which has been installed for ten years during the fiscal
13 year beginning July 1, 1986, or during any succeeding fiscal
14 year shall install at least two water wells adjacent to the
15 tank site not later than three years from July 1 of the fiscal
16 year following the fiscal year in which the underground
17 storage tank has been installed ten years. At least one water
18 well shall be installed to intersect the water saturated zone
19 before the water reaches the underground storage tank site and
20 at least one water well shall be installed to intersect the
21 water saturated zone after the water leaves the underground
22 storage tank site. However, if the owner presents
23 satisfactory evidence to the department that the saturated
24 zone lies below forty feet beneath the ground surface in the
25 area adjacent to the tank site or if drilling demonstrates
26 that the saturated zone is more than forty feet beneath the
27 ground surface in the area adjacent to the tank site, the
28 wells must be drilled only to at least two feet below the
29 depth of the deepest tank at the tank site.

30 In adopting the rules under this subsection, the commission
31 may distinguish between types, classes, and ages of
32 underground storage tanks. In making the distinctions, the
33 commission may take into consideration factors including, but
34 not limited to, location of the tanks, compatibility of a tank
35 material with the soil and climate conditions, uses of the

1 tanks, history of maintenance, age of the tanks, current
2 industry recommended practices, national consensus codes,
3 hydrogeology, water table, size of the tanks, quantity of
4 regulated substances periodically deposited in or dispensed
5 from the tank, the degree of risk presented by the regulated
6 substance, the technical and managerial capability of the
7 owners and operators, and the compatibility of the regulated
8 substance and the materials of which the underground storage
9 tank is fabricated.

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

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

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

1 owner or operator if an action had been brought against the
2 owner or operator by the claimant and which would have been
3 available to the guarantor if an action had been brought
4 against the guarantor by the owner or operator.

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

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

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

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

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

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

370 11 d. A sufficient number of water wells to adequately
12 monitor the quality of water in the saturated zone beneath the
13 ground surface adjacent to the underground storage tank sites.
14 The water wells shall be drilled into the water saturated zone
15 beneath ground surface. At least one water well shall be
16 installed to intersect the water saturated zone before the
17 water reaches the underground storage tank site and at least
18 one water well shall be installed to intersect the water
19 saturated zone after the water leaves the underground storage
20 tank site. However, if the owner presents satisfactory
21 evidence to the department that the saturated zone lies below
22 forty feet beneath the ground surface in the area adjacent to
23 the tank site or if drilling demonstrates that the saturated
24 zone is more than forty feet beneath the ground surface in the
25 area adjacent to the tank site, the wells must be drilled only
26 to at least two feet below the depth of the deepest tank at
27 the tank site.

28 4. The form and content of the written notices required by
29 section 455B.463.

30 5. The duties of owners or operators of underground
31 storage tanks to locate and abate the source of release of
32 regulated substances, when in the judgment of the executive
33 director, the local hydrology, geology and other relevant
34 factors reasonably include a tank as a potential source.

35 6. Reporting requirements necessary to enable the

1 department to maintain an accurate inventory of underground
2 storage tanks.

3 7. Designation of regulated substances subject to this
4 part, consistent with section 455B.461, subsection 4. The
5 rules shall be at least as stringent as the regulations of the
6 federal government pursuant to section 311, subsection b,
7 paragraph 2, subparagraph A of the Federal Water Pollution
8 Control Act [33 U.S.C. § 1321(b)(2)(A)], pursuant to section
9 102 of the Comprehensive Environmental Response, Compensation,
10 and Liability Act [42 U.S.C. § 9602], pursuant to section 307,
11 subsection a of the federal Water Pollution Control Act [33
12 U.S.C. § 1317(a)], pursuant to section 112 of the Clean Air
13 Act [42 U.S.C. § 7412], or pursuant to section 7 of the Toxic
14 Substances Control Act [15 U.S.C. § 2606].

3709 15 The rules adopted by the commission under this section
16 shall be consistent with and shall not exceed the requirements
17 of federal regulations relating to the regulation of
18 underground storage tanks except for the water well
19 requirements under subsection 1, paragraph "f" and subsection
20 3, paragraph "d".

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

23 The executive director shall:

24 1. Inspect and investigate the facilities and records of
25 owners and operators of underground storage tanks as may be
26 necessary to determine compliance with this part and the rules
27 adopted pursuant to this part. An inspection or investigation
28 shall be concluded subject to section 455B.103, subsection 8.

29 For purposes of developing a rule, maintaining an accurate
30 inventory or enforcing this part, the department may:

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

33 b. Inspect and obtain samples from any person of a
34 regulated substance and conduct monitoring or testing of the
35 tanks, associated equipment, contents or surrounding soils,

1 air, surface water and groundwater. Each inspection shall be
2 commenced and completed with reasonable promptness.

3 (1) If the executive director obtains a sample, prior to
4 leaving the premises, the executive director shall give the
5 owner, operator, or agent in charge a receipt describing the
6 sample obtained and if requested a portion of each sample
7 equal in volume or weight to the portion retained. If the
8 sample is analyzed, a copy of the results of the analysis
9 shall be furnished promptly to the owner, operator, or agent
10 in charge.

11 (2) Documents or information obtained from a person under
12 this subsection shall be available to the public except as
13 provided in this subparagraph. Upon a showing satisfactory to
14 the executive director by a person that public disclosure of
15 documents or information, or a particular part of the
16 documents or information to which the executive director has
17 access under this subsection would divulge commercial or
18 financial information entitled to protection as a trade
19 secret, the executive director shall consider the documents or
20 information or the particular portion of the documents or
21 information confidential. However, the document or
22 information may be disclosed to officers, employees or
23 authorized representatives of the United States charged with
24 implementing the federal Solid Waste Disposal Act, to
25 employees of the state of Iowa or of other states when the
26 document or information is relevant to the discharge of their
27 official duties, and when relevant in any proceeding under the
28 federal Solid Waste Disposal Act or this part.

29 2. Maintain an accurate inventory of underground storage
30 tanks.

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

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

35 1. If there is substantial evidence that a person has

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

11 2. However, if it is determined by the executive director
12 that an emergency exists respecting any matter affecting or
13 likely to affect the public health, the executive director may
14 issue any order necessary to terminate the emergency without
15 notice and without hearing. The order is binding and
16 effective immediately and until the order is modified or
17 vacated at a hearing before the commission or by a district
18 court.

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

22 Sec. 7. NEW SECTION. 455B.467 PENALTIES --BURDEN OF
23 PROOF.

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

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

1 misdemeanor.

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

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

16 5. If the attorney general has instituted legal
17 proceedings in accordance with this section, all related
18 issues which could otherwise be raised by the alleged violator
19 in a proceeding for judicial review under section 455B.468
20 shall be raised in the legal proceedings instituted in
21 accordance with this section.

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

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

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

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1 Amend House File 643, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 5, by striking lines 4 through 29 and
4 inserting the following:
5 "f. Specifying an adequate monitoring system to
6 detect the presence of a leaking underground storage
7 tank and to provide for protection of the groundwater
8 resources. In adopting the rules, the commission may
9 delay the adoption until the United States
10 environmental protection agency has published final
11 regulations."
12 2. Page 8, by striking lines 11 through 27 and
13 inserting the following:
14 "d. Rules adopted by the commission shall specify
15 adequate monitoring systems to detect the presence of
16 a leaking underground storage tank and to provide for
17 protection of the groundwater resources. In adopting
18 such rules, the commission may delay the adoption or
19 effective date of the rules until the United States
20 environmental protection agency has published final
21 regulations for the same facilities."
22 3. Page 9, by striking lines 18 through 20 and
23 inserting the following: "underground storage tanks."

S-3709 Filed April 11, 1985

By COM. ON ENERGY & ENVIRON.

Adopted 4/19/85 (p. 1516)

SENATE AMENDMENT TO HOUSE FILE 643

H- 3963

1 Amend House File 643, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 5, by striking lines 4 through 29 and
4 inserting the following:
5 "f. Specifying an adequate monitoring system to
6 detect the presence of a leaking underground storage
7 tank and to provide for protection of the groundwater
8 resources. In adopting the rules, the commission may
9 delay the adoption until the United States
10 environmental protection agency has published final
11 regulations."
12 2. Page 8, by striking lines 11 through 27 and
13 inserting the following:
14 "d. Rules adopted by the commission shall specify
15 adequate monitoring systems to detect the presence of
16 a leaking underground storage tank and to provide for
17 protection of the groundwater resources. In adopting
18 such rules, the commission may delay the adoption or
19 effective date of the rules until the United States
20 environmental protection agency has published final
21 regulations for the same facilities."
22 3. Page 9, by striking lines 18 through 20 and
23 inserting the following: "underground storage tanks."

H-3963 FILED APRIL 23, 1985

RECEIVED FROM THE SENATE

*House refused to concur 4/25/85 GJ
Senate insisted 4/29 (p. 1731)*

SEVENTY-FIRST GENERAL ASSEMBLY
1985 REGULAR SESSION

DAILY
HOUSE CLIP SHEET

THURSDAY, MAY 2, 1985

REPORT OF THE CONFERENCE COMMITTEE ON
HOUSE FILE 643

To the Speaker of the House of Representatives and the
President of the Senate:

We, the undersigned members of the conference committee
appointed to consider the difference between the House of
Representatives and the Senate on House File 643, a bill for
an Act relating to the authority of the department of water,
air and waste management over underground tanks for storage of
regulated substances and petroleum products, and subjecting
violators to civil and criminal penalties, respectfully submit
the following recommendations:

1. That the Senate recede from its amendment.

Page Two, Conference Committee Report, House File 643

2. That House File 643, as amended, passed, and reprinted by the House, be amended as follows:

1. Page 5, by striking lines 4 through 29 and inserting the following:

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

2. Page 8, by striking lines 11 through 27 and inserting the following:

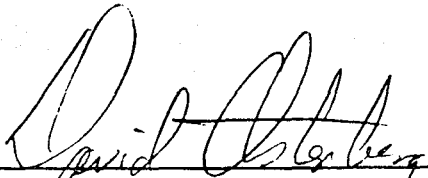
"d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after May 1, 1986. The commission shall adopt these rules not later than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

3. Page 9, by striking lines 18 through 20 and inserting the following: "underground storage tanks except as provided in subsection 1, paragraph "f" and subsection 3, paragraph "d". It is the intent of the general assembly that state rules adopted pursuant to subsection 1, paragraph "f" and subsection 3, paragraph "d" be consistent with and not more

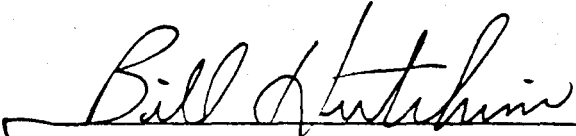
restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted."

ON THE PART OF THE HOUSE:

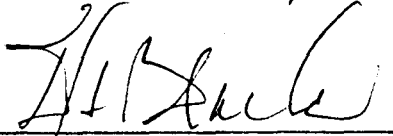
ON THE PART OF THE SENATE:



DAVID OSTERBERG, Chairperson



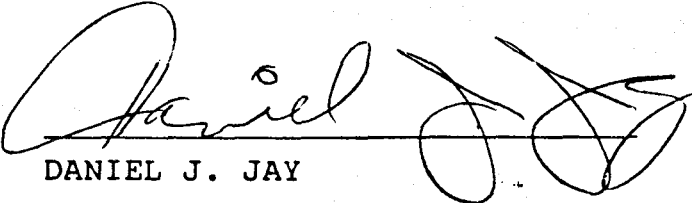
BILL HUTCHINS, Chairperson



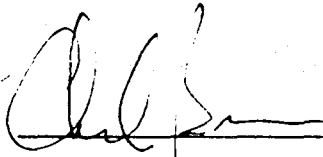
DENNIS H. BLACK



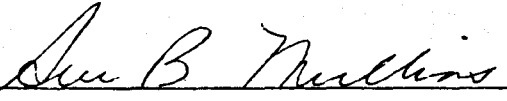
MICHAEL E. GRONSTAL



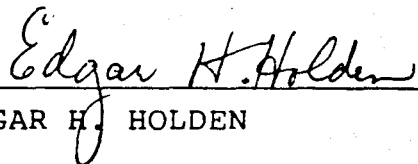
DANIEL J. JAY



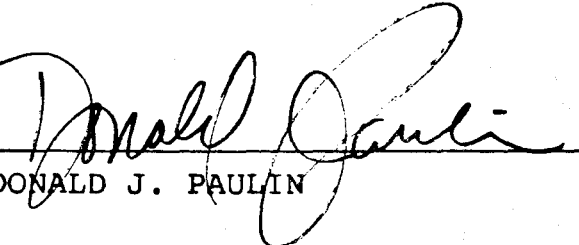
CHARLES E. BRUNER



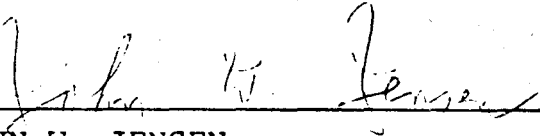
SUE B. MULLINS



EDGAR H. HOLDEN



DONALD J. PAULIN



JOHN W. JENSEN

Now
HF 643

ENERGY AND ENVIRONMENTAL PROTECTION

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
ENERGY AND ENVIRONMENTAL
PROTECTION BILL)

Study Bill 217

Energy and Environmental Protection: Osterberg, Chair; Black, Jay, Lageschulte,
Royer and Shultz.

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the authority of the department of water, air
2 and waste management over underground tanks for storage of
3 regulated substances and petroleum products, and subjecting
4 violators to civil and criminal penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

2 As used in sections 455B.461 through 455B.468 unless the
3 context otherwise requires:

4 1. "Nonoperational storage tank" means an underground
5 storage tank in which regulated substances will not be
6 deposited or from which regulated substances will not be
7 dispensed after July 1, 1985.

8 2. "Operator" means a person in control of, or having
9 responsibility for, the daily operation of the underground
10 storage tank.

11 3. "Owner" means:

12 a. In the case of an underground storage tank in use on or
13 after July 1, 1985, a person who owns the underground storage
14 tank used for the storage, use, or dispensing of regulated
15 substances.

16 b. In the case of an underground storage tank in use
17 before July 1, 1985, but no longer in use on that date, a
18 person who owned the tank immediately before the
19 discontinuation of its use.

20 4. "Regulated substance" means an element, compound,
21 mixture, solution or substance which, when released into the
22 environment, may present substantial danger to the public
23 health or welfare or the environment. Regulated substance
24 includes substances designated in 40 C.F.R., Parts 61 and 116,
25 and section 401.15, and petroleum including crude oil or any
26 fraction of crude oil which is liquid at standard conditions
27 of temperature and pressure (sixty degrees Fahrenheit and
28 fourteen and seven-tenths pounds per square inch absolute).
29 However, regulated substance does not include a substance
30 regulated as a hazardous waste under the Resource Conservation
31 and Recovery Act of 1976. Substances may be added or deleted
32 as regulated substances by rule of the commission pursuant to
33 455B.464.

34 5. "Release" means spilling, leaking, emitting,
35 discharging, escaping, leaching, or disposing from an

1 underground storage tank into ground water, surface water, or
2 subsurface soils.

3 6. "Underground storage tank" means one or a combination
4 of tanks, including underground pipes connected to the tanks
5 which are used to contain an accumulation of regulated
6 substances and the volume of which, including the volume of
7 the underground pipes, is ten percent or more beneath the
8 surface of the ground. Underground storage tank does not
9 include:

10 a. Farm or residual tanks of one thousand one hundred
11 gallons or less capacity used for storing motor fuel for
12 noncommercial purposes.

13 b. Tanks used for storing heating oil for consumptive use
14 on the premises where stored.

15 c. Residential septic tanks.

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

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

23 f. A storm water or wastewater collection system.

24 g. A flow-through process tank.

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

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

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

34 The general assembly finds that the release of regulated
35 substances from underground storage tanks constitutes a threat

1 to the public health and safety and to the natural resources
2 of the state, and that existing regulatory programs of the
3 department and other agencies do not adequately or
4 appropriately address this substantial public concern.

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

6 1. The owner or operator of an underground storage tank
7 existing on or before July 1, 1985, shall notify the
8 department in writing by January 1, 1986, of the existence of
9 each tank and specify the age, size, type, location and uses
10 of the tank.

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

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

26 4. Subsections 1 to 3 do not apply to an underground
27 storage tank for which notice was given pursuant to section
28 103, subsection c, of the Comprehensive Environmental
29 Response, Compensation and Liabilities Act of 1980.

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

34 6. A person who sells a tank intended to be used as an
35 underground storage tank shall notify the purchaser of the

1 tank in writing of the owner's notification requirements
2 pursuant to this section.

3 Sec. 4. 455B.464 POWERS AND DUTIES OF COMMISSION.

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

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

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

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

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

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

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

26 In adopting the rules under this subsection, the commission
27 may distinguish between types, classes, and ages of
28 underground storage tanks. In making the distinctions, the
29 commission may take into consideration factors including, but
30 not limited to, location of the tanks, soil and climate
31 conditions, uses of the tanks, history of maintenance, age of
32 the tanks, current industry recommended practices, national
33 consensus codes, hydrogeology, water table, size of the tanks,
34 quantity of regulated substances periodically deposited in or
35 dispensed from the tank, the technical and managerial

1 capability of the owners and operators, and the compatibility
2 of the regulated substance and the materials of which the
3 underground storage tank is fabricated.

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

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

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

34 c. The total liability of a guarantor shall be limited to
35 the aggregate amount which the guarantor has provided as

1 evidence of financial responsibility to the owner or operator
2 under this subsection. This subsection does not limit any
3 other state or federal statutory, contractual, or common law
4 liability of a guarantor to its owner or operator including,
5 but not limited to, the liability of the guarantor for bad
6 faith in negotiating or in failing to negotiate the settlement
7 of any claim. This subsection does not diminish the liability
8 of any person under section 107 or 111 of the Comprehensive
9 Environmental Response, Compensation and Liability Act of 1980
10 or other applicable law.

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

15 3. Standards of performance for new underground storage
16 tanks which shall include, but are not limited to, design,
17 construction, location and installation requirements adequate
18 to prevent or minimize any release of regulated substances
19 into the environment. The standards shall include, at a
20 minimum, a requirement that each tank shall provide a primary
21 level of containment which is impervious to each substance
22 which is to be contained and is not subject to physical or
23 chemical deterioration by the substance over the useful life
24 of the tank, and a secondary level or method of containment
25 which will result in the control of any substance released
26 from the primary level of containment and is capable of
27 storing the released substance for the maximum period of time
28 anticipated for the recovery of the substance, a requirement
29 that piping systems shall be equipped with leak detection
30 systems, and a requirement that each tank shall be equipped
31 with a leak detection system.

32 4. The form and content of the written notices required by
33 section 455.463.

34 5. The duties of owners or operators of underground
35 storage tanks to locate and abate the source of release of

1 regulated substances, when in the judgment of the executive
2 director, the local hydrology, geology and other relevant
3 factors reasonably include a tank as a potential source.

4 6. Reporting requirements necessary to enable the
5 department to maintain an accurate inventory of underground
6 storage tanks.

7 7. Designation of regulated substances subject to this
8 part, consistent with section 455B.461, subsection 4. The
9 rules shall be at least as stringent as the regulations of the
10 federal government pursuant to section 311, subsection b,
11 paragraph 2, subparagraph A of the Federal Water Pollution
12 Control Act [33 U.S.C. §1321(b)(2)(A)], pursuant to section
13 102 of the Comprehensive Environmental Response, Compensation,
14 and Liability Act [42 U.S.C. §9602], pursuant to section 307,
15 subsection a of the federal Water Pollution Control Act [33
16 U.S.C. §1317(a)], pursuant to section 112 of the Clean Air Act
17 [42 U.S.C. §7412], or pursuant to section 7 of the Toxic
18 Substances Control Act [15 U.S.C. §2606].

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

21 The executive director shall:

22 1. Inspect and investigate the facilities and records of
23 owners and operators of underground storage tanks as may be
24 necessary to determine compliance with this part and the rules
25 adopted pursuant to this part. An inspection or investigation
26 shall be concluded subject to section 455B.103, subsection 8.

27 For purpose of developing a rule, maintaining an accurate
28 inventory or enforcing this part, the department may:

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

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

1 (1) If the executive director obtains a sample, prior to
2 leaving the premises, the executive director shall give the
3 owner, operator, or agent in charge a receipt describing the
4 sample obtained and if requested a portion of each sample
5 equal in volume or weight to the portion retained. If the
6 sample is analyzed, a copy of the results of the analysis
7 shall be furnished promptly to the owner, operator, or agent
8 in charge.

9 (2) Documents or information obtained from a person under
10 this subsection shall be available to the public except as
11 provided in this subparagraph. Upon a showing satisfactory to
12 the executive director by a person that public disclosure of
13 documents or information, or a particular part of the
14 documents or information to which the executive director has
15 access under this subsection would divulge commercial or
16 financial information entitled to protection as a trade
17 secret, the executive director shall consider the documents or
18 information or the particular portion of the documents or
19 information confidential. However, the document or
20 information may be disclosed to officers, employees or
21 authorized representatives of the United States charged with
22 implementing the federal Solid Waste Disposal Act, to
23 employees of the state of Iowa or of other states when the
24 document or information is relevant to the discharge of their
25 official duties, and when relevant in any proceeding under the
26 federal Solid Waste Disposal Act or this part.

27 2. Maintain an accurate inventory of underground storage
28 tanks.

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

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

33 If there is substantial evidence that a person has violated
34 or is violating a provision of this part or a rule adopted
35 under this part the executive director may issue an order

1 directing the person to desist in the practice which
2 constitutes the violation, and to take corrective action as
3 necessary to ensure that the violation will cease, and may
4 impose appropriate administrative penalties pursuant to
5 section 455B.109. The person to whom the order is issued may
6 appeal the order to the commission as provided in chapter 17A.
7 On appeal, the commission may affirm, modify or vacate the
8 order of the executive director.

9 2. However, if it is determined by the executive director
10 that an emergency exists respecting any matter affecting or
11 likely to affect the public health, the executive director may
12 issue any order necessary to terminate the emergency without
13 notice and without hearing. The order is binding and
14 effective immediately and until the order is modified or
15 vacated at a hearing before the commission or by a district
16 court.

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

20 Sec. 7. NEW SECTION. 455B.467 PENALTIES -- BURDEN OF
21 PROOF.

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

27 2. A person who knowingly fails to notify or makes a false
28 statement, representation, or certification in a record,
29 report, plan or other document filed or required to be
30 maintained under this part or who falsifies, tampers with or
31 knowingly renders inaccurate a monitoring device or method
32 required to be maintained under this part or by a rule or
33 order issued under this part, upon conviction shall be
34 punished by a fine of not more than ten thousand dollars or by
35 imprisonment in the county jail for not more than six months

1 or by both the fine and imprisonment for each day of
2 violation.

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

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

17 5. If the attorney general has instituted legal
18 proceedings in accordance with this section, all related
19 issues which could otherwise be raised by the alleged violator
20 in a proceeding for judicial review under section 455B.468
21 shall be raised in the legal proceedings instituted in
22 accordance with this section.

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

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

31 EXPLANATION

32 This bill provides regulatory authority for the department
33 of water, air and waste management over underground tanks used
34 to store regulated substances and liquid petroleum products to
35 prevent and abate releases into the environment. The bill

1 provides notification requirements for owners, operators,
2 sellers and depositors of underground storage tanks. The bill
3 authorizes the commission to adopt rules relating to
4 detection, prevention and correction, financial
5 responsibility, standards of performance for new tanks, notice
6 requirements, duties of owners to locate and abate releases,
7 reporting requirements, and designations of regulated
8 substances.

9 This bill provides civil and criminal penalties for
10 violations of its requirements. The civil penalty is not to
11 exceed five thousand dollars for each day of violation and the
12 criminal penalty is a fine of not more than ten thousand
13 dollars for each day of violation or imprisonment for not more
14 than six months, or both the fine and imprisonment.

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HOUSE FILE 643

AN ACT

RELATING TO THE AUTHORITY OF THE DEPARTMENT OF WATER, AIR AND WASTE MANAGEMENT OVER UNDERGROUND TANKS FOR STORAGE OF REGULATED SUBSTANCES AND PETROLEUM PRODUCTS, AND SUBJECTING VIOLATORS TO CIVIL AND CRIMINAL PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

As used in this part unless the context otherwise requires:

1. "Nonoperational storage tank" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.
2. "Operator" means a person in control of, or having responsibility for, the daily operation of the underground storage tank.
3. "Owner" means:
 - a. In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.
 - b. In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.
4. "Regulated substance" means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes substances designated in 40 C.F.R., Parts 61 and 116, and section 401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and

fourteen and seven-tenths pounds per square inch absolute). However, regulated substance does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be added or deleted as regulated substances by rule of the commission pursuant to 455B.464.

5. "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

6. "Underground storage tank" means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. Underground storage tank does not include:

- a. Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.
- b. Tanks used for storing heating oil for consumptive use on the premises where stored.
- c. Residential septic tanks.
- d. Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985 (49 U.S.C. § 1671 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985 (49 U.S.C. § 2001 et seq.), or an intrastate pipeline facility regulated under chapter 479.
- e. A surface impoundment, pit, pond, or lagoon.
- f. A storm water or wastewater collection system.
- g. A flow-through process tank.
- h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.
- i. A storage tank situated in an underground area including, but not limited to, a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is

situated upon or above the surface of the floor. Underground storage tank does not include pipes connected to a tank described in paragraphs "a" to "i".

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

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

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

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

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

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

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

4. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of five dollars for each tank included in the notice. A separate

fund is created in the state treasury, the receipts of which are appropriated to pay the administrative expenses of the department incurred under this part. All fees collected by the department under this subsection shall be credited to the fund. The unobligated or unencumbered balance in the fund as of June 30 of each year shall be transferred to the hazardous waste remedial fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted.

4. The form and content of the written notices required by section 455B.463.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the executive director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.461, subsection 4. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the Federal Water Pollution Control Act [33 U.S.C. § 1321(b)(2)(A)], pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. § 9602], pursuant to section 307, subsection a of the federal Water Pollution Control Act [33 U.S.C. § 1317(a)], pursuant to section 112 of the Clean Air Act [42 U.S.C. § 7412], or pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. § 2606].

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

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

The executive director shall:

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

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

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

(1) If the executive director obtains a sample, prior to leaving the premises, the executive director shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the executive director by a person that public disclosure of documents or information, or a particular part of the documents or information to which the executive director has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the executive director shall consider the documents or information or the particular portion of the documents or information confidential. However, the document or information may be disclosed to officers, employees or

authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this part.

2. Maintain an accurate inventory of underground storage tanks.

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

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

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

2. However, if it is determined by the executive director that an emergency exists respecting any matter affecting or likely to affect the public health, the executive director may issue any order necessary to terminate the emergency without notice and without hearing. The order is binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a district court.

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

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

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

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

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

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

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.468 shall be raised in the legal proceedings instituted in accordance with this section.

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

Except as provided in section 455B.467, subsection 5, judicial review of an order or other action of the commission or the executive director may be sought in accordance with

chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

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

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 643, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 22, 1985

TERRY E. BRANSTAD
Governor