

EPA-Approved Iowa Statutory Requirements Applicable to the Underground Storage Tank Program

December 22, 2023

40 CFR 282.65(d)(l)(i)(B)

**U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219**

For the most part, Iowa's no less stringent underground storage tank program compliance criteria is included in their regulations. Some statutes of the Iowa Code appearing in this Incorporation by Reference Notebook were not struck out if these related directly to Chapter 135 of the Iowa Administrative Code. Statutes struck out include definitions not listed in 40 CFR 280.12 2015 UST Rules or references to rulemaking or other implementation used to establish the authority of the Iowa Department of Natural Resources to create and administer their underground storage tank program. None of those statutes are incorporated by reference.

CHAPTER 455B

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

Referred to in §15E.208, 306.27, 331.428, 357A.11, 357E.1, 364.22, 455A.4, 455A.6, 455E.5, 455E.6, 455E.8, 455G.5, 455H.303, 455H.507, 455I.2, 461A.62

SUBTITLE IV

PART 8

UNDERGROUND STORAGE TANKS

Referred to in §455E.11, 455H.102, 455H.107, 455H.204

455B.471 Definitions.

As used in this part unless the context otherwise requires:

1. ~~"Board" means the Iowa comprehensive petroleum underground storage tank fund board.~~

2. ~~"Corrective action" means an action taken to reduce, minimize, eliminate, clean up, control, or monitor a release to protect the public health and safety or the environment. "Corrective action" includes but is not limited to excavation of an underground storage tank for purposes of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, and site management practices. "Corrective action" does not include replacement of an underground storage tank. "Corrective action" specifically excludes third-party liability.~~

3. ~~"Fund" means the Iowa comprehensive petroleum underground storage tank fund.~~

4. ~~"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.~~

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

6. a. "Owner" means:

(1) 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.

(2) 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.

b. To the extent consistent with the federal Resource Conservation and Recovery Act, as amended to January 1, 1994, 42 U.S.C. §6901 et seq., "owner" does not include a person who holds indicia of ownership in the underground storage tank or the tank site property if all of the following apply:

(1) The person holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or tank site property, where such indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term "primarily to protect that person's security interest" includes but is not limited to ownership interests

acquired as a consequence of that person exercising rights as a security interest holder in the underground storage tank or tank site property, where such exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by such interest. The person holding indicia of ownership in the underground storage tank or tank site property and who acquires title or a right to title to such underground storage tank or tank site property upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold such indicia of ownership primarily to protect that person's security interest so long as subsequent actions taken by that person with respect to the underground storage tank or tank site property are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) The person does not exhibit managerial control of, or managerial responsibility for, the daily operation of the underground storage tank or tank site property through the actual, direct, and continual or recurrent exercise of managerial control over the underground storage tank or tank site property in which that person holds a security interest, which managerial control materially divests the borrower, debtor, owner or operator of the underground storage tank or tank site property of such control.

(3) The person has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

7. "*Petroleum*" means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

8. "*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., pts. 61 and 116, and 40 C.F.R. §401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60 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 section 455B.474.

9. "*Release*" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance, including petroleum, from an underground storage tank into groundwater, surface water, or subsurface soils.

~~10. "*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.~~

11. a. "*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.

b. (1) "*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, codified at 49 U.S.C. §1671 et seq., the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985, codified at 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.

(2) "Underground storage tank" does not include pipes connected to a tank described in paragraph "b", subparagraph (1).

85 Acts, ch 162, §1; 89 Acts, ch 131, §33 – 35; 93 Acts, ch 42, §5; 94 Acts, ch 1067, §1; 95 Acts, ch 215, §4; 2011 Acts, ch 25, §106; 2012 Acts, ch 1023, §59; 2014 Acts, ch 1026, §99

Referred to in §101.1, 101.21, 455B.473, 455B.474, 455B.751, 455B.752, 455G.13, 558.69

~~455B.472 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.~~

~~85 Acts, ch 162, §2~~

455B.473 Report of existing and new tanks – fee.

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. An owner or operator of a storage tank described in section 455B.471, subsection 11, paragraph "b", subparagraph (1), subparagraph division (a), which brings the tank into use after July 1, 1987, shall notify the department of the existence of the tank within thirty days. The registration of the tank shall be accompanied by a fee of ten dollars to be deposited in the storage tank management account. A tank which is existing before July 1, 1987, shall be reported to the department by July 1, 1989. Tanks under this section installed on or following July 1, 1987, shall comply with underground storage tank regulations adopted by rule by the department.~~

~~5. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of ten dollars for each tank included in the notice. All moneys collected shall be deposited in the storage tank management account of the groundwater protection fund created in section 455E.11. All moneys collected pursuant to this section prior to July 1, 1987, which have not been expended, shall be deposited in the storage tank management account.~~

~~6. Subsections 1 through 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 Liability Act of 1980.~~

~~7. A person who sells, installs, modifies, or repairs a tank used or intended to be used as an underground storage tank shall notify the purchaser and the owner or operator of the tank in writing of the owner's notification requirements pursuant to this section including the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department. A person who installs an underground storage tank and the owner or operator of the underground storage tank shall, prior to installing an underground storage tank, notify the department in writing regarding the intent to install a tank.~~

~~8. a. It shall be unlawful to deposit or accept a regulated substance in an underground storage tank which has not been registered and issued permanent and annual tank management fee renewal tags pursuant to subsections 1 through 6. A person shall not deposit a regulated substance in an underground storage tank after receiving notice from the department that the underground storage tank is not covered by an approved form of financial responsibility in accordance with section 455B.474, subsection 2.~~

~~b. The department shall furnish the owner or operator of an underground storage tank~~

with a registration tag for each underground storage tank registered with the department. The owner or operator shall affix the tag to the fill pipe of each registered underground storage tank. If an owner or operator fails to register or obtain annual renewal tags for the underground storage tank, the owner or operator shall pay an additional fee of two hundred fifty dollars upon registration of the tank. A fee imposed pursuant to this subsection shall not preclude the department from assessing an administrative penalty pursuant to section 455B.476.

9. The department may deny issuance of a registration or annual tank management fee renewal tag for failure of the owner or operator to provide proof the underground storage tank is covered by an approved form of financial responsibility as provided in section 455B.474, subsection 2.

85 Acts, ch 162, §3; 87 Acts, ch 225, §604, 605; 2001 Acts, ch 51, §1, 2; 2002 Acts, ch 1119, §60; 2011 Acts, ch 25, §136, 143; 2012 Acts, ch 1023, §150; 2021 Acts, ch 80, §286; 2023 Acts, ch 64, §72

Referred to in §455B.474, 455B.477, 455E.11—
Subsection 6 amended

455B.473A Petroleum underground storage tank registration amnesty program. Repealed by 2011 Acts, ch 34, §164.

455B.474 Duties of commission—rules.

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

1. a. 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:

(1) 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.

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

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

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

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

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

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

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

(iv) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the

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

~~(b) A site shall be classified as either high risk, low risk, or no action required, as determined by a certified groundwater professional.~~

~~(i) A site shall be considered high risk when a certified groundwater professional determines that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:~~

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

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

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

~~(ii) A site shall be considered low risk when a certified groundwater professional determines that low risk conditions exist as follows:~~

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

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

~~(iii) A site shall be considered no action required and a no further action certificate shall be issued by the department when a certified groundwater professional determines that contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.~~

~~(iv) For purposes of classifying a site as either low risk or no action required, the department shall rely upon the example tier one risk-based screening level look-up table of ASTM (American society for testing and materials) international's emergency standard, ES38-94, or other look-up table as determined by the department by rule.~~

~~(v) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site and the site shall be classified as indicated by the groundwater professional unless, within ninety days of receipt by the department, the department identifies material information in the report that is inaccurate or incomplete, and based upon inaccurate or incomplete information in the report the risk classification of the site cannot be reasonably determined by the department based upon industry standards. If the department determines that the site cleanup report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within ninety days of receipt of the report and shall work with the groundwater professional to obtain correct information or additional information necessary to appropriately classify the site. However, from July 1, 2010, through June 30, 2011, the department shall have one hundred twenty days to notify the certified groundwater professional when a report is not accepted based on material information that is found to be inaccurate or incomplete. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under this section.~~

~~(5) The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required~~

to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

~~(6) Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include but not be limited to all of the following:~~

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

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

~~(ii) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "a", subparagraph (4).~~

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

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

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

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

~~(d) High risk sites shall be addressed pursuant to a corrective action design report, as submitted by a groundwater professional and as accepted by the department. The corrective action design report shall determine the most appropriate response to the high risk conditions presented. The appropriate corrective action response shall be based upon industry standards and shall take into account the following:~~

~~(i) The extent of remediation required to reclassify the site as a low risk site.~~

~~(ii) The most appropriate exposure scenarios based upon residential, commercial, or industrial use or other predefined industry accepted scenarios.~~

~~(iii) Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.~~

~~(iv) Affected human or environmental receptors and exposure scenarios based on current and projected use scenarios.~~

~~(v) Risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with ASTM (American society for testing and materials) international's emergency standard, ES38-94.~~

~~(vi) Other relevant site specific factors such as the feasibility of available technologies, existing background contaminant levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of engineering and institutional controls, including an environmental covenant as established by chapter 455L.~~

~~(vii) Remediation shall not be required on a site that does not present an increased cancer risk at the point of exposure of one in one million for residential areas or one in ten thousand for nonresidential areas.~~

~~(e) A corrective action design report submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if within ninety days of receipt of a corrective action design report, the department identifies material information in the corrective action design report that is inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based upon industry standards, the department shall notify the groundwater professional that the corrective action design report is not accepted, and the department shall work with the groundwater professional to correct the material information or to obtain the additional information necessary to appropriately determine the corrective action response requirements as soon as practicable. However, from July 1, 2010, through June 30, 2011, the department shall have one hundred twenty days to notify the certified groundwater professional when a corrective action design report is not accepted based on material information that is found to be inaccurate or incomplete. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in an improper or incorrect corrective action response shall be guilty of a serious misdemeanor and shall have the groundwater professional's~~

certification revoked under this section.

~~(f) Low risk sites shall be monitored as deemed necessary by the department consistent with industry standards. Monitoring shall not be required on a site which has received a no further action certificate. A site that has maintained less than the applicable target level for four consecutive sampling events shall be reclassified as a no action required site regardless of exit monitoring criteria and guidance.~~

~~(g) An owner or operator may elect to proceed with additional corrective action on the site. However, any action taken in addition to that required pursuant to this subparagraph (6), shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of section 455G.9, unless otherwise previously agreed to by the board and the owner or operator pursuant to section 455G.9, subsection 7. Corrective action taken by an owner or operator due to the department's failure to meet the time requirements provided in subparagraph division (c) shall be considered corrective action for purposes of section 455G.9.~~

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

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

~~(j) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this subparagraph (6) are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.~~

~~(k) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this subparagraph (6). Any order taken by the director pursuant to this subparagraph division shall be reviewed at the next meeting of the environmental protection commission.~~

~~(7) 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 January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. 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. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.~~

~~(8) Issuing a no further action certificate or a monitoring certificate to the owner or operator of an underground storage tank site.~~

~~(a) A no further action certificate shall be issued by the department for a site which has been classified as a no further action site or which has been reclassified pursuant to completion of a corrective action plan or monitoring plan to be a no further action site by a groundwater professional, unless within ninety days of receipt of the report submitted by the groundwater professional classifying the site, the department notifies the groundwater professional that the report and site classification are not accepted and the department identifies material information in the report that is inaccurate or incomplete which causes the department to be unable to accept the classification of the site. An owner or operator shall not be responsible for additional assessment, monitoring, or corrective action activities at a site that is issued a no further action certificate unless it is determined that the certificate was issued based upon false material statements that were knowingly or intentionally made by a groundwater professional and the false material statements resulted in the incorrect classification of the site.~~

~~(b) A monitoring certificate shall be issued by the department for a site which does not require remediation, but does require monitoring of the site.~~

~~(c) A certificate shall be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this subparagraph (8), or a subsequent purchaser of the site shall not be required to perform further corrective action because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.~~

~~(9) Establishing a certified compliance inspector program administered by the department for underground storage tank facility compliance inspections.~~

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

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

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

~~(b) The department shall continue to conduct independent inspections as provided in section 455B.475 as deemed appropriate to assure effective compliance and enforcement and for the purpose of auditing the accuracy and completeness of inspections conducted by certified compliance inspectors.~~

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

~~b. 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.~~

~~c. The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.~~

~~2. The maintenance of evidence of financial responsibility as the 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. (1) (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:~~

~~(i) Insurance.~~

~~(ii) Guarantee.~~

~~(iii) Surety bond.~~

~~(iv) Letter of credit.~~

~~(v) Qualification as a self-insurer.~~

(b) 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.

(2) A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This subparagraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

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.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

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 ASTM (American society for testing and materials) international's standard G57-78 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 January 14, 1987. 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. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.~~

~~4. The form and content of the written notices required by section 455B.473.~~

~~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 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.471, subsection 8. 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.~~

~~8. Requirements as may be necessary to maintain state program approval and which are consistent with applicable provisions of the federal Energy Policy Act of 2005, Pub. L. No. 109-58, Tit. XV, Subtit. B, Underground Storage Tank Compliance, as codified in 42 U.S.C. §6991 et seq.~~

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

~~b. The commission shall adopt rules related to the prohibition on the delivery of regulated substances consistent with and sufficient to comply with the provisions of 42 U.S.C. §6991k, guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision, and state program approval requirements under 42 U.S.C. §6991k(a)(3).~~

~~c. The commission shall adopt rules applicable to secondary containment requirements consistent with and sufficient to comply with the provisions of Pub. L. No. 109-58, Tit. XV, §1530(a), as codified at 42 U.S.C. §6991b(i)(1), and guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision. Each new underground storage tank or piping connected to any such new tank installed after July 1, 2007, or any existing underground storage tank or existing piping connected to such existing underground storage tank that is replaced after August 1, 2007, shall be secondarily contained if the installation is within one thousand feet of any existing community water system or any existing potable drinking water well as provided in Pub. L. No. 109-58, Tit. XV, §1530(a), as codified at 42 U.S.C. §6991b(i)(1), and in guidance adopted by the United States environmental protection agency pursuant to that provision. Rules adopted under this~~

paragraph shall not amend or modify the secondary containment requirements in subsection 1, paragraph "a", subparagraph (6), subparagraph division (i).

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

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

~~(1) A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.~~

~~(2) A professional engineer licensed in Iowa.~~

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

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

~~(5) Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:~~

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

~~(b) Five years of related professional experience.~~

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

~~d. The certification of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of a groundwater professional certified pursuant to this subsection.~~

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

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

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

~~h. Notwithstanding the certification requirements of this subsection, a site cleanup report or corrective action design report submitted by a certified groundwater professional shall be accepted by the department in accordance with subsection 1, paragraph "a", subparagraph (4), subparagraph division (b), subparagraph subdivision (v), and paragraph "a", subparagraph (6), subparagraph division (c).~~

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

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

~~b. Establishing minimum qualifications for certification including but not limited to considerations based on education, character, professional ethics, experience, manufacturer~~

or other private agency certification, training and apprenticeship, and field demonstration of competence. The rules may provide for exemption from education, experience, and training requirements for a licensed engineer for whom underground storage tank installation is within the scope of their license and practice but shall require compliance with other certification requirements.

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

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

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

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

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

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

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

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

~~85 Acts, ch 162, §4; 86 Acts, ch 1245, §1899A; 87 Acts, ch 225, §606; 88 Acts, ch 1244, §4—7, 9; 89 Acts, ch 131, §36, 37; 91 Acts, ch 252, §5, 6; 92 Acts, ch 1163, §95; 95 Acts, ch 215, §5—10; 2000 Acts, ch 1058, §44, 45; 2004 Acts, ch 1086, §106; 2005 Acts, ch 102, §2; 2007 Acts, ch 171, §1—6; 2009 Acts, ch 41, §263; 2010 Acts, ch 1069, §57; 2010 Acts, ch 1193, §169—174; 2011 Acts, ch 25, §107, 137, 138, 143; 2012 Acts, ch 1023, §60—62; 2016 Acts, ch 1011, §79; 2017 Acts, ch 54, §57, 58; 2017 Acts, ch 170, §38; 2023 Acts, ch 19, §1660, 1661~~

~~Referred to in §159A.14, 455B.471, 455B.473, 455B.474A, 455G.9, 455H.105~~

~~Subsection 10, unnumbered paragraph 1 amended—~~

~~Subsection 10, paragraph c amended~~

455B.474A Rules consistent with federal regulations.

~~The rules adopted by the commission under section 455B.474 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 section 455B.474, subsection 1, paragraph~~

~~“a”, subparagraph (6), and section 455B.474, subsection 3, paragraph “d”. It is the intent of the general assembly that state rules adopted pursuant to section 455B.474, subsection 1, paragraph “a”, subparagraph (6), and section 455B.474, 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.~~

~~2010 Acts, ch 1069, §58; 2011 Acts, ch 25, §139; 2013 Acts, ch 30, §101~~

455B.475 Duties and powers of the director.

~~The 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 4. 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 director obtains a sample, prior to leaving the premises, the 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 director by a person that public disclosure of documents or information, or a particular part of the documents or information to which the director has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the 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 director's judgment, is necessary to enforce or secure compliance with this part or any rule adopted under this part.~~

~~85 Acts, ch 162, §5; 86 Acts, ch 1245, §1899A~~

~~Referred to in §455B.474~~

455B.476 Violations—orders.

~~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 director may issue an order directing the person to desist in the practice that 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 director. The applicable time frames for the issuance and appeal of the order are defined in section 455B.110.~~

~~2. However, if it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the 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 director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.477.~~

~~85 Acts, ch 162, §6; 86 Acts, ch 1245, §1899A; 2019 Acts, ch 97, §7; 2020 Acts, ch 1063, §242
Referred to in §455B.473~~

455B.477 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 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 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.478 shall be raised in the legal proceedings instituted in accordance with this section.~~

~~6.—The penalty for intentional failure of an owner or operator to register a petroleum underground storage tank under section 455B.473 shall be a minimum of seven thousand five hundred dollars up to a maximum of ten thousand dollars after October 1, 1989.~~

~~7.—The civil penalties or other damages or moneys recovered by the state or the petroleum underground storage tank fund in connection with a petroleum underground storage tank under this part or subchapter IV or chapter 455G shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget. Any federal moneys, including but not limited to federal underground storage tank trust fund moneys, received by the state or the department of natural resources in connection with a release occurring on or after May 5, 1989, or received generally for underground storage tank programs on or after May 5, 1989, shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget, unless such use would be contrary to federal law. The department shall cooperate with the board of the Iowa comprehensive petroleum underground storage tank fund to maximize the state's eligibility for and receipt of federal funds for underground storage tank related purposes.~~

~~85 Acts, ch 162, §7; 86 Acts, ch 1245, §1899A; 88 Acts, ch 1244, §10; 89 Acts, ch 131, §39;
2021 Acts, ch 76, §105~~

~~Referred to in §29C.8A, 455B.476, 455B.478~~

455B.478 Judicial review.

~~Except as provided in section 455B.477, subsection 5, judicial review of an order or other action of the commission or the 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.~~

~~85 Acts, ch 162, §8; 86 Acts, ch 1245, §1899A~~

~~Referred to in §455B.477~~

~~455B.479 Storage tank management fee.~~

~~An owner or operator of an underground storage tank shall pay an annual storage tank management fee of sixty-five dollars per tank of over one thousand one hundred gallons capacity. The fees collected shall be deposited in the storage tank management account of the groundwater protection fund created in section 455E.11.~~

~~87 Acts, ch 225, §607; 89 Acts, ch 131, §38; 2010 Acts, ch 1193, §175; 2023 Acts, ch 64, §73~~

~~Referred to in §455E.11-~~

~~Section amended~~