July 2008

28E AGREEMENT
BETWEEN THE IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, AND THE IOWA DEPARTMENT OF NATURAL RESOURCES FOR ASSESSMENT AND CORRECTIVE ACTION AT LUST SITES FOR WHICH A "NO FURTHER ACTION" CERTIFICATE HAS BEEN ISSUED

This Agreement is entered into by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (hereinafter "Board"), with its Administrator's office located at 2700 Westown Parkway, Suite 320, W. Des Moines, Iowa 50266, and the Iowa Department of Natural Resources (hereinafter "DNR"), located at 502 E. 9th Street, Des Moines, IA 50319. This Agreement is entered into pursuant to Chapter 28E of the Code of Iowa and Iowa Code sections 455G.5 and 455G.6(15), and is effective as of the date it is fully executed by all parties.

I. PURPOSE

The purpose of this Agreement is to implement the provisions of Iowa Code section 455G.9(1)(k) (2007) specifically and solely for the three enumerated tank sites at which the DNR has determined that unreasonable risk to public health may exist due to conditions from a release for which a "no further action" ("NFA") certificate was issued pursuant to Iowa Code section 455B.474. The Parties hereby establish the terms under which the Board may provide for assessment and corrective action arising out of releases at three leaking underground storage tank sites identified as (1) UST # 198602333 / LUST # 9LTN55 (formerly LUS T # 7LTS20) – Spurrier Brothers Oil Co., Clearfield, IA (2) UST # 198606444 / LUST # 9LTN11 (formerly LUST # 7LTY10) – Osceola BP, Osceola, IA and (3) UST # 198710385 / LUST # 9LTN38 (formerly LUST # 7LTN31) – Kum & Go # 664, West Union, IA ("LUST sites") for which the DNR determines that an unreasonable risk to public health and safety may still exist subsequent to issuing a "no further action" ("NFA") certificate pursuant to Iowa Code section 455B.474. The Parties do not intend to create a separate legal entity under this Agreement, and no real or personal property will be acquired, held or disposed of by the Parties under the terms of this Agreement.

II. TERM

This Agreement shall be in effect for an indefinite period of time unless terminated in accordance with this Agreement.

III. ADMINISTRATION

This Agreement shall be administered by the Board and its Administrator in consultation with the DNR. All administrative decisions concerning this Agreement shall be undertaken pursuant to the terms outlined herein.

IV. ELIGIBLE COSTS

The Board agrees to provide funds for the following assessment and corrective action activities, up to $100,000 total (unless a greater amount is approved by the Board), and subject to the prioritization rules established by the Board, at the LUST Sites pursuant to this Agreement:

1. assessment of an actual impact to a receptor to determine the nature and scope of

risk to public health and safety;

2. corrective action necessary to reduce or remove contamination actually impacting a receptor, or remove or relocate a receptor, until an unreasonable risk to public health is no longer present;
3. new releases occurring after the release for which the NFA certificate was issued that create an emergency condition (i.e., immediate and imminent threat to public health); otherwise, only after funding from other UST financial responsibility mechanisms are exhausted; and
4. any additional assessment, including assessment for the presence of risk, and corrective action activities the Board, in consultation with the DNR, may agree to provide for on a case-by-case basis.

Any assessment and corrective action activities under this Agreement exceeding $100,000 at any individual site shall be subject to review and approval by the Board. Any costs, however, associated with the use of State employees, equipment, and materials are not eligible for reimbursement pursuant to this Agreement.

Unless emergency conditions exist, assessment and corrective actions performed pursuant to this Agreement shall have the budget for the work approved by the Board administrator prior to commencement of the work, except for expenses incurred prior to the execution of this agreement. No expense incurred which is above the budgeted amount shall be paid unless the Board administrator approves such expense. All invoices or bills shall be submitted with appropriate documentation as deemed necessary by the Board, no later than thirty days after the work has been performed. The Board may deny or pay any portion or part of invoices for work incurred which was not been previously approved by the Board. The Board may pay a portion of costs incurred if conditions at the site are impacted by a release which occurred or was reported subsequent to the release for which the NFA certificate was issued.

V. RESPONSIBILITIES

The DNR and the Board shall retain all powers and duties conferred by their respective enabling acts, but shall assist each other in the exercise of these powers and the performance of these duties in the following manner:

A. DNR RESPONSIBILITIES

1. Ensure that access to the site for assessment and corrective action activities is granted by the owner of the LUST Sites.

2. Approve assessment and corrective action activities necessary and proper to reduce or eliminate the identified unreasonable risk to public health.

3. Obtain input from the Board as needed to fulfill the provisions of this Agreement.

5. Cooperate and assist with Board cost recovery efforts.

6. Assist and cooperate with the Board in developing any professional services contracting documents necessary to implement the terms of this Agreement.

B. BOARD RESPONSIBILITIES

1. Provide funds used exclusively to reimburse eligible claimants for all eligible costs incurred to fulfill the provisions of this Agreement.

3. Maintain itemized records of funds expended pursuant to this Agreement for each LUST Site that allow the Parties to determine the actual cost of assessment and corrective action activities.

4. Provide input to the DNR as needed to fulfill the provisions of this Agreement.

VI. FINANCING

The Board shall pay all costs associated with the administration of this Agreement in accordance with the terms of this Agreement.

VII. AMENDMENT

This Agreement may be amended from time to time by written agreement of the Parties. All amendments shall be in writing, signed by both Parties, and filed with the Secretary of State.

VIII. TERMINATION

A. Termination Upon Mutual Consent. This Agreement may be terminated upon the mutual written consent of the parties.

B. Termination By One Party. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations, conditions, and procedures set forth below, either party to this Agreement shall have the right to terminate this Agreement without penalty by giving sixty (60) days' written notice to the other party to the Agreement as a result of any of the following:

1. There are insufficient funds available to allow a party to fulfill its obligations under this Agreement;

2. A change in the law prevents or substantially impairs a party's ability to participate in this Agreement; or

3. Failure to perform responsibilities described in this Section V of this Agreement at a quality or quantity that can be reasonably expected by the other party.

IX. NOTICES

Whenever notices and correspondence are to be given under this Agreement, the notices shall be given by personal delivery to the other party, or sent by mail, postage prepaid, to the other party as follows:

To the Board

Iowa UST Fund Board
2700 Westown Parkway, Suite 320,
West. Des Moines, Iowa 50266

To the DNR

Iowa Department of Natural Resources
UST Section
502 E. 9th Street
Des Moines, IA 50319

X. APPLICABLE LAW

This Agreement is to be governed by the laws of the State of Iowa.

XI. FILING AND RECORDING

It is agreed the Board will electronically file this Agreement with the Secretary of State, and electronically file any amendment, modification, or notice of termination of this Agreement within thirty days as provided in Iowa Code section 28E.8.

XII. NO THIRD PARTY BENEFICIARY RIGHTS

The rights and responsibilities of this Agreement are limited solely to parties herein, and this Agreement is not intended to convey a benefit, right, or entitlement of any kind to a party who is not a party to this Agreement. Any benefit to a third party resulting from or related to this Agreement is merely incidental and creates no legal right in a third party to enforce any provision of this Agreement against a party hereto.

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties have entered into this 28E Agreement and have caused their duly authorized representatives to execute this 28E Agreement.

IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD

BY: Scott Scheidel
Scott Scheidel, Administrator

DATE: 7-30-08

IOWA DEPARTMENT OF NATURAL RESOURCES

BY: Richard Leopold
Richard Leopold, Director

DATE: 7-28-08