

## **B. Status of 28E Agreements**



# IOWA UNDERGROUND STORAGE TANK FUND

Douglas M. Beech, *Chairperson*

Scott M. Scheidel, *Administrator*

**Board Members:**

Michael L. Fitzgerald

Joseph D. Barry

Eric W. Johnson

Karen E. Andeweg

Chuck Gipp

Dawn M. Carlson

Jeff W. Robinson

## MEMORANDUM

**TO: UST BOARD MEMBERS**

**FROM: SCOTT SCHEIDEL**

**SUBJECT: 28E AGREEMENTS**

**DATE: July 20, 2012**

There is a total of (28) 28E agreements that the Board has entered into since the inception of the Program. They are as follows:

### 28E AGREEMENT

### FISCAL 2012 EXPENDITURES

*1. Dept of Revenue & Finance – fee for EPC collections	\$9,779.84
2. DNR – registration of groundwater professionals	\$ 0.00
3. DNR – site mapping project with Iowa State University	\$ 0.00
4. DNR – SCR technical review assistance	\$ 0.00
5. DNR – LUST trust funds – Shenandoah/Council Bluffs	\$ 0.00
6. DNR – automation of ability to pay system	\$ 0.00
7. DNR – EPA flood impact study	\$ 0.00
8. DNR – part time staffing for computer system development & input	\$ 0.00
9. Attorney General's Office – Board & Cost Recovery Counsel	\$ 0.00
10. DNR – RBCA implementation assistance & staff training	\$ 0.00
*11. DNR – UST closures	\$ 0.00
12. DNR – Database integration	\$ 0.00
13. DNR – assistance in administering RBCA processes	\$ 0.00
*14. Attorney General's Office – Board & Cost Recovery Counsel	\$ 87,384.76
15. DNR – assistance for UST Section (FY05)	\$ 0.00
16. DNR – assistance for UST Section (FY06)	\$ 0.00
*17. DNR – Double Circle FS CRP for 2 LUST sites	\$29,621.20
*18. DNR – City of Sioux City agreement (potential pymt to City of \$1.75M)	\$ 0.00
19. DNR – Temporary FTE for report reviews (Jan-Jun 2006)	\$ 0.00
20. DNR – assistance for UST Section (FY07)	\$ 0.00
*21. DNR – Limited NFA for 3 Sites	\$ 0.00
22. DNR – FY08 UST Section Funding	\$ 0.00
*23. DNR – NFA Agreement (455G.9(1)(k))	\$ 174,254.04
24. DNR – FY09 UST Section Funding	\$ 0.00
*25. DNR – Plume Study Agreement	\$ 0.00
*26. DNR – Legal Staff Position Funding	\$ 0.00
*27. DNR – FY10 (multi-year) UST Section Funding	\$ 200,000.00
28. ISU – UST Operator Data Management System	\$0.00

\* Denotes ongoing agreements; all other agreements have been completed.

## **C. Attorney General's Report**

## **D. Prior Year's Goals**

## Fiscal Year 2012 Goals Summary

### Claims Closures

- Close 165 claims by the end of the fiscal year; actual result was 132 claims closed in FY 2012
- Have 100 Corrective Action meetings by the end of the fiscal year; actual result was 57 meetings held in FY 2012
- Jointly evaluate sites with DNR to identify potential sites for State Lead projects such as the Closure Contract project or CRPs. Following review of eligible sites in FY 2011, work began on identifying potential sites for the State Lead Closure Contract project. Both the DNR and Administrator staffs examine the lists to identify possible sites and while a several letters have been issued, only a few responses have been received. Cost recovery issue seems to be main obstacle.

### Short/Long Term Solvency

- Continue RBCA evaluation/calibration work with DNR. In FY 2012, DNR lead on the prior Vapor Intrusion workgroup indicated the group may restart to examine the draft and pending USEPA Vapor Intrusion Guidance, to be released in November 2012.

	September 2011	December 2011	March 2012	June 2012
Closed Claims	37 closed 6 new/reopened	10 closed 2Q-- <b>47 closed YTD</b> 4 new/reopen 2Q-- <b>10 YTD</b>	29 closed 3Q— <b>76 closed YTD</b> 9 new/reopen 3Q— <b>19 YTD</b>	56 closed Q4— <b>132 closed YTD</b> 5 new/reopen— <b>24 YTD</b>
CA Meetings	9 Completed 0 New MOA	16 Completed 2Q-- <b>25 YTD</b> 1 New MOA 2Q-- <b>1 YTD</b>	15 Completed 3Q— <b>40 YTD</b> 2 New MOA— <b>3 YTD</b>	17 Completed 2Q— <b>57 YTD</b> 1 New MOA— <b>4 YTD</b>

## **II. DNR Report of UST Issues**

**III. Program Goals – Fiscal 2013**

# IOWA UST FUND PROGRAM FISCAL YEAR 2013 GOALS DISCUSSION

## A. ISSUES FROM LAST YEAR

## B. GETTING PROGRAM TO CLOSURE

- Setting number or percentage goals
  - Claims closures
    - Historical
    - Effecting Acceleration
  - Corrective Action meetings
    - CADR's
- Setting activity goals
  - Rule changes
  - Reserve reviews
- Process Improvements
  - DNR Coordination (NFA, new openers)
- Consider Board/DNR led sites
  - Claim eligible
  - Consider Eligibility Issue Claims
- Loss Portfolio Transfers

## C. MAINTAIN SHORT AND LONG TERM SOLVENCY

- Cash flow—revenue and expenses
- DNR Coordination
- Establish longer term trust fund for DNR (re: No RP, NFA, etc.)

## D. LEGISLATIVE INITIATIVES

## **IV. Summary**

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## **Approval of Prior Board Minutes**



# IOWA UNDERGROUND STORAGE TANK FUND

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## MINUTES IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND PROGRAM

May 24, 2012

### COMMISSIONER'S CONFERENCE ROOM IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET DES MOINES, IOWA

Douglas Beech called the Iowa UST Board meeting to order at 10:04 A.M. A quorum was present, with the following Board members present:

Joseph Barry  
Jake Friedrichsen (for Michael Fitzgerald)  
Karen Andeweg  
Dawn Carlson

Also present were:

David Steward, Attorney General's Office  
Scott Scheidel, Administrator  
Verne Schrunk, Iowa Department of Natural Resources

#### APPROVAL OF PRIOR BOARD MINUTES

Mr. Beech inquired if the members had reviewed the minutes and if there was any items for discussion. Mr. Friedrichsen noted he was not present, as indicated, at the April 27, 2012 meeting. Mr. Beech noted the correction and asked for a motion. Mr. Friedrichsen motioned to approve the minutes of the April 27, 2012 meeting, and Mr. Barry seconded the motion, and by a vote of 5-0, the minutes were approved.

#### CLOSED SESSION

Mr. Beech noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21.

#### PUBLIC COMMENT

Mr. Eldon Meyer of K&H Oil and Mr. Tom Draur of Barker Lemar Engineering Consultants noted

they were present to answer questions regarding proposed Board reports should any questions arise.

**BOARD ISSUES**

**A. Legislative Issue Discussion**

Mr. Scheidel provided an update on the legislative session noting that the 2012 session adjourned on May 9, 2012. The session produced one significant change for the Iowa UST Fund Board that had been discussed in the prior meetings. Mr. Scheidel noted the change would add one additional public member and one additional petroleum marketer both of which would be appointed by the Governor’s office. Mr. Scheidel noted that legislation would be in effect on July 1, 2012 and that the Governor’s office would make the appointments after that date.

**B. DNR Update**

No report was presented by the DNR representative.

Mr. Scheidel noted that Ms. Douskey, the UST Section Supervisor, had sent out information regarding the Notice of Intended Action mentioned in last month’s meeting regarding a proposed rule change which would outline options available to the Department for addressing legal matters. Mr. Scheidel noted that the comment period remains open through August 17, 2012 and noted that the proposed rules would seem to have little direct effect on matters pertaining to the Board.

**PROGRAM BILLINGS**

Mr. Scheidel presented the current monthly billings to the Board for approval.

- 1. Aon Risk Services.....\$97,608.00  
    Consulting Services for July 2012 -- \$58,608.00  
    Claims Processing Services for July 2012 -- \$39,000.00
  
- 2. Iowa Attorney General’s Office.....\$5,757.34  
    Legal Services provided for Underground Storage Tank Program  
    April FY2012 Billing
  
- 3. Iowa Department of Revenue  
    January – March FY2012 –  
    Environmental Protection Charge Collection Billing .....\$4,501.75

In a motion by Ms. Andeweg and a second by Ms. Carlson all billings were approved by a vote of 5-0.

## MONTHLY ACTIVITY REPORT

Mr. Scheidel noted that the April activity report was included in the packet, and noted the trend continues downward for remedial, ILO, and global claims, while the number of retroactive claims has remained somewhat steady albeit low. Mr. Scheidel noted that the number of Class A & B UST Operators trained has also increased by 10 in the past month. Mr. Scheidel inquired on status of the Class C Operator training, and Mr. Gastineau noted two public entities had signed up to use the new Iowa UST Operator Data Management System and to take the Class C training now offered through the Iowa State University project.

Mr. Scheidel noted there was nothing of significance in the financials, but did note that the one remaining action to be taken was the close out and transfer of the funds from the Revenue Fund to the Unassigned Revenue Fund.

## ATTORNEY GENERAL'S REPORT

Mr. Steward noted there was no report to be presented.

## CLAIM AUTHORITY

Mr. Gastineau presented the following claim authority requests:

### **1. Site Registration 8609205 – K& H Coop, Corwith, IA (2<sup>nd</sup> Board Report)**

Mr. Gastineau presented information noting the site is classified high risk for the water line and vapor pathways, and noted that a vapor extraction system was installed in 2011 as a result of a report of vapors in the adjacent building. It was noted that since the system was installed there have been no new reports of vapors. Mr. Gastineau stated a recommendation has been made to expand the system to provide for the removal of water as the neighboring business cannot install a sump pit without potentially creating a vapor pathway and to provide a greater level of vapor control. Mr. Gastineau noted concerns as no sampling has been performed within the structure or under the structure, it may be difficult to assess when the system has succeeded in its mission.

Mr. Gastineau noted the present claim reserve is \$200,000, with costs incurred to date at \$146,692.86. Projected costs for the system, operation, and monitoring are in the range of \$85,000 to \$150,000+. Mr. Gastineau requested an additional authority for work at the site be increased by \$125,000.

Mr. Gastineau noted this site is a rather unique situation that has not been seen very often but offered information on a similar site in Clear Lake, IA. For that site, petroleum contamination had impacted a neighbor's business and it was noted when the neighbor had installed a sump pump to control water intrusion, the Board had approved funding to vent the sump pit and to treat the contaminated water collected in the sump prior to its discharge to the environment. Mr.

Gastineau noted that should a similar action be required for this site, it was expected that the costs would similarly be considered reimbursable. He also noted that in consideration of the plan submitted, the Department had scheduled a meeting for June 2012 to discuss the matter and determine what is required to meet Department goals and if the system as proposed is needed to address the contamination that is or may be present at the site.

Mr. Beech noted his concerns of the proposal and requested Mr. Thomas Draur of Barker Lemar Engineering Consultants provide more information on what the proposed system included and its intended purpose. Mr. Draur noted that in their 2010 proposal, they designed a vapor control system to alleviate the immediate concerns of potential vapors in the neighboring structure and noted that as work was completed to install the system, soil contamination was noted at depth in direct proximity to the neighbor's building. He also noted that following the installation vapors were initially detected in the exhaust stream however levels did diminish over time. He also noted that the proposed system was intended to lower the water table under the neighbors building and allow the venting operation to remediate any soil contamination that may be present.

Ms. Carlson asked if the funding request was sufficient and Mr. Gastineau stated with the proposal presented, and the options being explored, it would appear so. He also noted that the funding request was intended to cover the proposed system installation, utility costs, operation and maintenance of the system and any monitoring that may be required. Ms. Carlson asked about the target levels and questioned if the levels were equal to providing a comfort level that allows people to work noting that the adjacent property had to be evacuated in the past. Mr. Gastineau noted that the Department's risk based corrective action (RBCA) standards are health based and meant to provide protection to human health and safety, and noted that to date, no samples had been collected in the basement or beneath the basement structure to indicate elevated levels of contamination. Mr. Gastineau noted that due to that lack of data, the need for the expanded remediation could not be fully determined however it was expected and reasonable that the Department may require sampling of the media to determine that purpose.

Mr. Meyer noted that during the prior work to install a sump pump in the neighbor's building, vapors were encountered after the basement floor was breached and that those present were evacuated due to the odor and sudden onset of illness. He also stated he had visited the property while the pit was open and that he too, could not endure the odor that emanated from the pit and a decision was made to seal the hole as soon as possible. Mr. Meyer noted that while outside sampling may not indicate contamination target levels are exceeded, vapors were clearly present in that pit and must be addressed.

Ms. Andeweg inquired if the vapors in the basement create a public health risk. Mr. Scheidel noted that that is the question as no sampling has been conducted to determine what the levels may be at this time. Ms. Carlson inquired as to whether tests were to be done to determine if the basement safe to work in and it was noted sampling was needed to determine that issue. Mr. Meyer noted that since the control mechanism was installed, he has had not further reports of any vapors. Mr. Meyer also inquired of Mr. Gastineau's visit to the site in the past week and Mr. Gastineau explained his visit was to view other LUST sites in the area, but also to view this site, visit with local resources and to obtain pictures of the facility however it was noted that he did

not visit with the neighbors nor did he enter the neighbor's building. Ms. Carlson inquired as to why such a visit was completed and Mr. Gastineau noted that he visits sites to both view the sites and to verify work, noting that the State Auditor's office expects such visits be completed as part of the overall invoice verification process

Mr. Beech noted that other concerns were also present, such as potential third-party liability and the Board's function in providing benefits noting that the Board must weigh the options and its obligations. Mr. Beech noted that the Board needs to be careful as the Board did not cause the release nor did the Board create the problem with the neighbor. Mr. Beech noted his concern that personal responsibility by those who own the contamination must be considered and noted he had questioned if the Board may be doing too much, however he noted with the information provided by Mr. Draur he believes the prudent approach may now be in consideration. Mr. Beech stressed that the third party liability issue posed a concern.

Ms. Carlson noted that she too had the same concern noting that if benefits are not provided in a timely manner if the Board members themselves incurred some liability and if the responsible party is unable to fund the cleanup or if the fund doesn't cover third party liability, could the responsible party incur additional liability. Mr. Beech noted the Board has a responsibility to review each case individually looking at what is eligible and what may not be. Mr. Scheidel noted the Board must consider what is required by the Department, noting that if statutory requirements are met, the Board's statutory obligations are complete. Mr. Beech noted from a Casey's perspective that in some instances if third parties are not satisfied with what the Department requires, that they are likely to visit with his firm. He noted that such a concern is not a matter for the Board noting that if one's operation contaminates someone's property that that would be their own issue not that of the Board. Mr. Beech also noted that in this case, the matter at hand seems to be in a gray area, and his opinion is that the Board is meeting its obligation but at the same time not accepting what is not the Board's duty regarding potential third party liability.

Mr. Meyers noted his visit to the Board today was to provide input on the proposal recently submitted by his consultant. He noted that in the minutes for the last meeting which included this site that it had mentioned that both vapors and groundwater were a concern, and that the initial system was installed to address the vapors and that the proposed system was intended to address the groundwater contamination. Mr. Meyers noted that under the Department process sites could be classified high risk, low risk, or no action required and proposed a new classification be created for imminent concerns. Mr. Meyers noted that he is pleased with the current proposal and is not overly concerned with the length of time that treatment would be required. Mr. Draur again noted that the system was intended to treat the groundwater and would remediate the soil as it was exposed. He noted that as the contaminant levels are not presently known, the time needed to remediate the site is also uncertain however he expects that remediation would not require an extended effort. Mr. Meyers also noted that since the original intent was for the neighbor to install a sump, he would expect that the neighbor would pay for the discharge if a charge was incurred in the future.

Ms. Carlson thanked all for their input and noted that the information presented seems logical and as such, motioned to approve the recommendation as submitted; Mr. Friedrichsen seconded the motion. The measure passed on a vote of 5-0.

Mr. Beech noted that while the situation may be a bit odd, he also noted that many of the claims being addressed are rather old as they pertain to releases that occurred at least 22 years ago and noted that with the restrictions and guidelines placed on the program work is not always handled in an expeditious manner. He also noted that the Board has an obligation to assist with the cleanup of sites but must also keep in mind the balance of using of public funds in a manner consistent with the program.

## **2. Site Registration 8600668 – Cy’s & Charley’s Inc., Independence, IA**

Mr. Gastineau presented information noting the site is high risk for the groundwater ingestion pathway due to proximity to one drinking water well, also noting that the contaminant plume covers a small area and that a recommendation has been made to install a vapor extraction and air sparge system. The consultant expects that the system will operate for one year however Mr. Gastineau noted with past experience, funding is being requested for system operating costs for up to three years to be followed by post-remediation monitoring.

Mr. Gastineau noted the present claim reserve is \$85,000, with costs incurred to date at \$25,656.96. Projected costs for the system, operation, and monitoring were in the range of \$75,000 to \$125,000. Mr. Gastineau requested total authority for work at the site be increased to \$125,000.

Mr. Beech inquired as to why a well would be present in a municipal area. Mr. Gastineau noted the well was used for industrial purposes and while the owners could connect to public water there was no requirement that they do so. Mr. Beech asked if there was any further questions and hearing none, asked for a motion. Ms. Andeweg motioned to approve the recommendation and Ms. Carlson seconded the motion. The measure passed on a vote of 5-0.

## **3. Site Registration 8607462 – Daniel Grothus Property, Bettendorf, IA (2<sup>nd</sup> Board Report)**

Mr. Gastineau presented information noting this to be the 2<sup>nd</sup> Board report for this bedrock site classified high risk for groundwater contamination in proximity to multiple drinking water wells and low risk for the protected groundwater source. Mr. Gastineau noted that free product is also present and that a recommendation has been made to use high vacuum extraction (HVE) events to remove the product and remediate the groundwater contamination. It was also noted the site might be reclassified to low risk following clarification on the status of nearby drinking water wells. Mr. Gastineau also noted that excavation would not be possible due to the presence of shallow bedrock.

Mr. Gastineau stated the claim reserve is \$175,000, with costs incurred to date at \$162,881.78. Prior Board approval was given for costs up to \$150,000. Projected costs for the vacuum extraction events, Tier 3 work and future monitoring are in the range of \$50,000 to \$150,000+. Mr. Gastineau requested total authority for work at the site be increased to \$250,000.

Ms. Andeweg inquired as to why private wells are located in an urban area. Mr. Gastineau noted that the community does not have a publicly owned water system for residents use nor does an ordinance exist which would require residents to use the services of the private water company which serves the area. Mr. Beech asked about the status of the wells and Mr. Gastineau responded noting that the wells are presumed abandoned however confirmation is needed to verify the status as the Department's database on well information may not be entirely up to date.

Ms. Andeweg also asked about the bedrock features. Mr. Gastineau responded noting that bedrock was as shallow as three feet in some areas, and Mr. Scheidel noted that due to the fracturing of bedrock, the contamination was likely present within the bedrock thus making it difficult to remove.

Mr. Beech noted a continuing concern with the public scenario of funding cleanups in areas where water is readily available and indicated that the Board may wish to discuss the matter further with the Department representatives as to what options might be possible. Mr. Scheidel noted options may exist however in the short term benefits are needed so as not to punish the claimant and hinder work at a site. Mr. Andeweg asked if the well issues involved the entire metropolitan area, and it was noted that it does with the exception of the City of LeClaire. Mr. Scheidel noted the Board had funded an Iowa-American Water Co. water line to the City of LeClaire in response to an impact in the local water wells and the City had, as part of that project, adopted an ordinance requiring use of the water system. Mr. Scheidel noted Iowa-American Water Co. had refunded the Board following the project as more people joined into the system as the line provided the opportunities was new land development along the route.

Mr. Beech asked if there were any further comments and if someone wished to make a motion on the matter. Ms. Carlson motioned to approve the recommendation and Ms. Andeweg seconded the motion. The measure passed on a vote of 5-0.

#### **4. Site Registration 9117417 – Former East End Grocery, Melcher, IA**

Mr. Gastineau presented site information noting the high risk classification for the vapor pathways due to proximity to basements and sewers. Mr. Gastineau noted groundwater contaminant levels have declined below the target levels but noted that soil gas testing has repeatedly failed in the former tank basin area and as a result, a recommendation has been made to excavate the soils. Mr. Gastineau noted the excavation would be limited due to the size of the property but could be adjusted depending upon what is discovered in the field, and noted if successful should result in the site achieving a NAR classification following a period of post-excavation monitoring.

Mr. Gastineau noted the present claim reserve is \$100,000, with costs incurred to date at \$47,995. Projected costs for the excavation, post-excavation monitoring and future well closure

are in the range of \$50,000 to \$100,000. Mr. Gastineau requested total authority for work at the site be increased to \$125,000.

Ms. Carlson inquired as to what options might exist if the contamination extended beyond what was anticipated. Mr. Gastineau noted if the excavation would likely stop unless the authorization was obtained to dig into the roadway or onto the neighbors residential property.

Mr. Beech asked if there were any further questions on the matter and hearing none asked for a motion on this matter. Mr. Friedrichsen motioned to approve the claim authority, and Mr. Barry seconded the motion. The measure passed on a vote of 5-0.

#### **4. Site Registration 8608713 – Midway Oil, Indianola (2<sup>nd</sup> Board Report)**

Mr. Gastineau presented information noting the site is presently classified high risk for the vapor to enclosed space pathways and noted that in 2003 an excavation had been completed to remove contamination from those areas which were accessible given the placement of the operating UST systems, buildings, and utilities, and noted a remediation system had operated for 5 years with limited success due to tight soil properties. Mr. Gastineau noted a recommendation has been made to use an innovative technology, called Trap & Treat, which will be injected into the plume to promote biodegradation and enhance destruction of the contaminants. Mr. Gastineau noted that one treatment is projected.

Mr. Gastineau noted the present claim reserve is \$525,000, with costs incurred to date at \$408,133.54. Projected costs for the injections with monitoring to follow are in the range of \$100,000 to \$150,000. Mr. Gastineau requested additional authority of \$125,000 for total authority to \$550,000.

Mr. Gastineau noted that this technology is relatively new however has been used in other states. Mr. Binning of Seneca Environmental Services was asked what assurance could be made on success of the technology, and noted that he has to rely on the statements of the manufacturer but believed the product would be useful at the site. Mr. Beech noted his interest and willingness to approve the project making a motion to approve the recommended authority. Ms. Carlson seconded the motion, and the measure passed on a vote of 5-0.

#### **5. Site Registration 8603003 – Iowa Oil Company, Le Mars, IA**

Mr. Gastineau presented information noting the site is presently classified no further action with free product, as free product remains in one monitoring well near a former pump island location. Mr. Gastineau noted the free product location is now beneath a street due to a roadway expansion thus, excavation would not likely be possible without significant risks and costs. Mr. Gastineau noted costs for free product recovery and reporting using the hand bailing method are less than \$10,000 per year, but with concern that free product may persist for many more years the consultant has recommended using high vacuum extraction to enhance recovery to be followed with continued hand bailing if needed.

Mr. Gastineau noted the present claim reserve is \$100,000, with costs incurred to date at \$85,940.46. Projected costs for the continued monitoring and well closure are in the range of \$10,000 to \$25,000. Mr. Gastineau requested total authority for work at the site be increased to \$100,000.

Ms. Carlson motioned to approve the claim authority, and Ms. Andeweg seconded the motion. The measure passed on a vote of 5-0.

**6. Site Registration 8606845 – Molo Oil Company, Waverly, IA (2<sup>nd</sup> Board Report)**

Mr. Gastineau presented information noting the site is presently classified high risk for the water line pathway and low risk for the protected groundwater source pathway, and noted that further evaluation was needed in an attempt to define the contaminant plume in the direction of the water main and then to complete a modified evaluation to show that the water main will not be impacted. If a risk cannot be ruled out, an excavation or water line replacement may be completed. Since the site is also low risk for the protected groundwater source pathway, the excavation would hopefully assist in addressing that risk. Mr. Gastineau noted the alternative may also be to consider an institutional control for the protected groundwater source pathway.

Mr. Gastineau noted the present claim reserve is \$200,000, and that prior Board approval has been given in October 2006 for costs up to \$115,000. Mr. Gastineau noted the costs incurred to date are at \$123,187.46. Projected costs for future work are in the range of \$50,000 to \$100,000+. Mr. Gastineau requested an additional \$100,000 in authority for total authority for work at the site to \$215,000.

Ms. Carlson motioned to approve the claim authority, and Mr. Friedrichsen seconded the motion. The measure passed on a vote of 5-0.

**7. Site Registration 8606939 – City of Atlantic, Atlantic, IA**

Mr. Gastineau presented information noting the site is presently classified low risk however a recommendation is pending to reclassify the site high risk due to presence of water lines with gaskets in proximity to the contaminant plumes. Mr. Gastineau noted that under the recent rule changes, the water lines would now be considered high risk receptors however some questions remain which when answered may allow the water line pathway to be given a NAR classification. Mr. Gastineau noted that in that event, the remaining pathway would be the protected groundwater source and noted that groundwater contaminant levels are relatively high thus the consultant has recommended an excavation to remove contamination in the source area. Mr. Gastineau noted that following the excavation, monitoring would be required for one to two years to assess the effect of the excavation.

Mr. Gastineau noted the present claim reserve is \$75,000, with costs incurred to date at \$55,761.33. Mr. Gastineau noted the costs projected costs for future work are in the range of \$30,000 to \$100,000+. Mr. Gastineau requested total authority for work at the site to \$140,000.

Mr. Beech inquired the effect an ordinance would have on the site. Mr. Gastineau noted if an ordinance is passed prohibiting the installation of private wells the site could indeed be given a NAR classification for that pathway, however to date the City of Atlantic has not done so. Mr. Gastineau noted that contacts have been made in the past with the City and with Cass County however an ordinance has not yet been developed. Mr. Beech noted his frustration that without such an ordinance, activities at these sites could cost the State thousands of dollars.

Mr. Andeweg inquired on the water lines in question as it relates to the protected groundwater source. Mr. Gastineau noted that the risk to the water lines is a relatively new issue, and for this site the concern is not the water lines themselves, but the junction point where the service line and main intersect. The question has been presented to the Department as to whether that single gasket creates a risk and then if that risk is associated with the main or service line as different target levels apply. Mr. Gastineau noted that the protected groundwater source is a conceptual risk in that someone could install a well within the area of the contamination. Mr. Beech inquired as to whether a property specific restriction might work however in discussion with the consultant, Mr. Thomas Draur, it was noted that the projected plumes touch several properties and in order for a restriction to apply, each property would need to have a restriction placed upon it. Mr. Draur also noted that the property in question is owned by the City of Atlantic.

Mr. Beech asked the costs of the excavation, and it was noted the projected costs are approximately \$50,000 however no actual bids have been obtained. Mr. Beech made the recommendation that the water line be addressed, and a letter be sent to the City asking them to consider an ordinance. Mr. Beech also asked Mr. Draur to use his contacts to assist with the matter and Mr. Draur noted he had asked his contact at the Water Department about such an action in the past week. Mr. Beech noted contact with the City Council may be needed. Mr. Scheidel asked if there were other sites that would be affected by an ordinance and Mr., Draur noted that his firm is working on at least 5 sites that would benefit from such an action. Mr. Reinders of Cunningham Lindsey noted there were also other sites that would benefit.

In discussing the matter further, Mr. Beech made the recommendation that the Administrator's office contact the Mayor and City Council to seek the passage of an ordinance to prohibit water wells. Since sufficient funding remains available to address the water line pathway as a response from the Department is pending, Mr. Beech motioned to defer the request for additional authority. Ms. Carlson seconded the motion, and the measure was approved on a vote of 5-0.

#### **CONTRACTS ENTERED INTO SINCE THE April 27, 2012 BOARD MEETING**

Mr. Scheidel reported one contract extension had been entered into with Geode Environmental for continued work on the State lead project, CRPCA 0612-39: Galva.

**OTHER ISSUES**

Mr. Beech inquired if there were any other matters to be discussed. Mr. Scheidel noted that planning for the annual July meeting had begun and that the meeting was currently planned for July 10<sup>th</sup>. Mr. Scheidel noted that a potential quorum could be had in late July or that other dates could be considered in August. Mr. Beech asked that later dates be considered, and Mr. Scheidel noted that with the potential of new Board members, August might be a good option.

**CORRESPONDENCE AND ATTACHMENTS**

Mr. Beech asked if there was any further business. Hearing none, Ms. Andeweg moved to adjourn, and Mr. Barry seconded the motion. By a vote of 5-0, the Board adjourned at 11:02 a.m.

Respectfully Submitted,

A handwritten signature in black ink that reads "Scott M. Scheidel". The signature is written in a cursive, slightly slanted style.

Scott M. Scheidel  
Administrator

**Closed Session**

**Discussion of Pending and Imminent Litigation**

## **Public Comment Period**

## **Board Issues**

## **A. Aon Contract Extension**

## **B. 12 Month Meeting Schedule**



# IOWA UNDERGROUND STORAGE TANK FUND

Douglas M. Beech, *Chairperson*

Scott M. Scheidel, *Administrator*

*Board Members:*

Michael L. Fitzgerald

Joseph D. Barry

Eric W. Johnson

Karen E. Andeweg

Chuck Gipp

Dawn M. Carlson

Jeff W. Robinson

## MEMO

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**TO:** UST Board Members

**FROM:** Scott Scheidel

**DATE:** August 1, 2012

**RE:** Board Meeting Dates

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The Board has set a meeting schedule for the fourth Thursday of each month except during the months of January, February, March and April, in which alternate dates were to be selected on Mondays or Fridays where possible to accommodate the legislative session. This memo is to set the tentative dates for Fiscal 2013. The meeting dates will still be confirmed at the meetings two months prior and immediately prior. The tentative schedule for the next 12 months is:

- Thursday, August 23, 2012
- Thursday, October 25, 2012
- Tuesday, December 4, 2012
- Friday, January 25, 2013
- Friday, February 22, 2013
- Friday, March 21, 2013
- Friday, April 25, 2013
- Thursday, May 23, 2013
- Tuesday, July 16, 2013 (Annual Strategic Planning Session – off-site)

## **C. Fiscal 2013 Budget**

**IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND  
PROPOSED  
FISCAL YEAR TO DATE 2013 BUDGET**

		<b>FISCAL 2013 BUDGET</b>
<b>0471 - UST REVENUE FUND (Bonding)</b>		
	\$0.00	\$9,290,721.00
<b>Receipts:</b>		
Motor Vehicle Use Tax (IDOT - vehicle registration)		\$14,000,000.00
Intra State Fund Transfers Received		
Interest Income		
Interest Income - Capital Reserve Fund		
	\$0.00	\$14,000,000.00
<b>Disbursements:</b>		
Bond Interest Payment		
Bond Principal Payment		
EPC Charges		
Transfer to General Fund		
Transfer to Unassigned Revenue Fund		\$9,000,000.00
Transfer to Innocent Landowner Fund		\$7,000,000.00
Transfer to Remedial Non-Bonding Fund		\$7,000,000.00
	\$0.00	\$23,000,000.00
<b>Proposed Balance of Fund, June 30, 2013</b>		<b>\$0.00</b>
		<b>\$290,721.00</b>
<b>0450 - UST UNASSIGNED REVENUE FUND (Non-Bonding)</b>		
	\$0.00	\$4,701,809.63
<b>Receipts:</b>		
Request for Proposal Fees		
Copying/Filing Fees		
Fines & Penalties		\$10,000.00
Refund/Overpayment		
Transfer From UST Revenue Fund (0471)		\$9,000,000.00
Compensation for Pooled Money Investments		
Amort / Accretion		
Buys/ Sells		
Interest Income		\$25,000.00
	\$0.00	\$9,035,000.00
<b>Disbursements:</b>		
UST Administrator's Fees		\$1,100,000.00
Attorney General's Fees		\$65,000.00
Attorney's Fees: Cost-Recovery Administration		
Cost Recovery Expense (i.e. Lien Filing, Overpayment Refund)		\$150.00
Actuarial Fees		
Auditor of the State Fees		\$5,100.00
Bond Trustee's Fees - Bankers Trust		
Claim Settlement		
Custodial Fees - BONY		
Department of Revenue EPC Collection Fees		\$25,000.00
Innovative Technology		

**IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND  
PROPOSED  
FISCAL YEAR TO DATE 2013 BUDGET**

		<b>FISCAL 2013 BUDGET</b>
Inspection & Appeals Service Fees		
Legal and Professional Fees		
Postage / Printing / Miscellaneous		\$100.00
Professional Admin Services (Investments)		
Professional Services - Owner/Operator Training		\$100,000.00
Rebate		
Special Project Claims - Closure Contract Project		\$500,000.00
Travel Expenses-UST Board Members		\$700.00
Warrant Float Expense		
28E Agreement - DNR Plume Study		\$500,000.00
Statutory Transfer to DNR (technical review - recurring)		\$200,000.00
Statutory Transfer to IDAL (fuel quality inspections - recurring)		\$250,000.00
Appropriation 2013		\$200,000.00
Transfer of Funds to Innocent Land Owners		
	\$0.00	
		\$2,946,050.00
<b>Proposed Balance of Fund, June 30, 2013</b>	<b>\$0.00</b>	<b>\$10,790,759.63</b>
<hr/>		
<b>0208 - UST REMEDIAL NON-BONDING FUND</b>		
	\$0.00	\$2,476,236.34
<b>Receipts:</b>		
Remedial Refunds		\$0.00
Misc. Income (i.e. eligibility settlements)		
Interest Income		
Transfer From UST Revenue Fund (0471)		\$7,000,000.00
	\$0.00	\$7,000,000.00
<b>Disbursements:</b>		
Retroactive Claims		\$700,000.00
Remedial Claims		\$6,000,000.00
28E Agreement - NFA Claims		\$500,000.00
Transfer to Unassigned Revenue Fund		
Balance of Outdated Warrants		
	\$0.00	\$7,200,000.00
<b>Proposed Balance of Fund, June 30, 2013</b>	<b>\$0.00</b>	<b>\$2,276,236.34</b>
<hr/>		
<b>0478 - UST MARKETABILITY FUND</b>		
	\$0.00	\$717,263.77
<b>Receipts:</b>		
Interest		\$50,000.00
Use Tax		
	\$0.00	\$50,000.00
<b>Disbursements:</b>		
Intra State Fund Transfer		
Transfer to Innocent Landowners Fund		
	\$0.00	\$0.00
<b>Balance of Fund, July 31, 2012</b>	<b>\$0.00</b>	<b>\$767,263.77</b>

**IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND  
PROPOSED  
FISCAL YEAR TO DATE 2013 BUDGET**

		FISCAL 2013 BUDGET
<b>0485 - UST INNOCENT LANDOWNERS FUND</b>		
	\$0.00	\$3,789,762.08
<b>Receipts:</b>		
Cost Recovery (i.e. lien settlements)		\$0.00
ILO Refunds		
Transfer From UST Revenue Fund (0471)		\$7,000,000.00
Transfer From Loan Gaurantee Fund (0238)		\$277,788.24
Outdated Warrants		
Miscellaneous Income		
	\$0.00	\$7,277,788.24
<b>Disbursements:</b>		
Cost Recovery Reimbursement		
Cost Recovery Global Settlement		
Intra State Fund Transfers Paid (to Unassigned Revenue)		\$0.00
Other Contractual Services		
Global Settlement Claims		\$75,000.00
Innocent Landowner Claims		\$1,500,000.00
Transfer to Remedial Fund (208)		
Balance of Outdated Warrants		
	\$0.00	\$1,575,000.00
<b>Proposed Balance of Fund, June 30, 2013</b>	<b>\$0.00</b>	<b>\$9,492,550.32</b>
<b>0238 - UST LOAN GUARANTEE FUND (Non-Bonding)</b>		
	\$0.00	\$277,788.24
<b>Receipts:</b>		
Loan Application Fees		
Interest Income		\$0.00
	\$0.00	\$0.00
<b>Disbursements:</b>		
Transfer to Innocent Landowners Fund		\$277,788.24
	\$0.00	\$277,788.24
<b>Proposed Balance of Fund, June 30, 2013</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>0614 - UST CAPITAL RESERVE FUNDS (Bonding)</b>		
	\$0.00	\$0.00
<b>Proposed Balance of Fund, June 30, 2013</b>	<b>\$0.00</b>	<b>\$23,617,531.06</b>

**FOOTNOTES:**

**D. Fiscal 2013 Attorney General Agreement**

## AGREEMENT

This Agreement is entered into on this 23<sup>rd</sup> day of May, 2012, by and between the Department of Justice [hereinafter the Department] and the Underground Storage Tank Fund, [hereinafter the Fund], for the fiscal year 2013.

## PARTIES

1. The Department is headed by the Attorney General, a constitutionally created elected official, whose duties are delineated in chapter 13 of the Iowa Code.
2. The Fund is a body created by statute and delegated powers in its enabling act and other related statutes.

## DUTIES

1. The Department shall provide legal services to the Fund pursuant to chapter 13 of the Iowa Code through one or more attorneys within the Department.
2. Attorneys who provide legal services under this Agreement are subject to the supervision and direction of the Attorney General for all purposes.
  - A. The Attorney General shall make all assignments of attorneys to the Fund based on the available resources within the Department.
  - B. The Attorney General shall retain authority to determine compensation, conduct performance evaluations, determine the priority of work assignments and direct the work of all assigned attorneys.

## PAYMENT

1. Payment by the Fund for legal services performed by the Department shall be based on an estimate of the total annual value of the legal services which includes, but is not limited to: the attorney time devoted to the agency; the difficulty of the legal work required; and the provision of support staff in the performance of the legal services.
  - A. The Fund shall pay approximately \$50,000 to the Department for legal services for fiscal year 2013.
  - B. The Department shall bill the Fund for legal services monthly on a IET transfer document.

2. The Fund shall pay all travel and miscellaneous expenses incurred in the performance of legal services in addition to the amount specified for legal services. The Department shall obtain prior approval from the Fund before incurring travel expenses.
- A. Travel expenses include all expenses incurred by attorneys in relation to attending agency meetings, prosecuting contested case hearings and prosecuting or defending litigation, excluding tort claim defense.
  - B. Miscellaneous expenses include expert witness fees and expenses, deposition costs, copying costs, costs of supplies and other costs associated with the provision of legal services to the Fund. The Fund shall pay a maximum of \$500 in Westlaw charges for the fiscal year. The Department shall pay any West law charges in excess of \$500.

  
DEPUTY ATTORNEY GENERAL

\_\_\_\_\_  
UST FUND

5-24-12  
DATE

\_\_\_\_\_  
DATE

## **E. Loss Portfolio Transfer Proposal**

## AGREEMENT

This Agreement is entered into by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ("Board"), an Iowa governmental agency created pursuant to Iowa Code chapter 455G, and Petroleum Marketers Management Insurance Company ("PMMIC"), a licensed, for-profit insurance company. This Agreement is effective as of the date it is fully executed by all parties.

WHEREAS, Iowa Code section 455G.6(17) (2007) authorizes the Board to adopt rules providing for the transfer of all or a portion of the liabilities of the Board, and the Board has adopted rules contained in 591 Iowa Admin. Code 9 providing for the transfer of the Board's liabilities to third parties; and

WHEREAS, PMMIC and the Board desire to enter into this Agreement allowing for the transfer of liabilities for UST sites containing contamination from petroleum underground storage tanks for which the following two conditions exist: (1) a party is currently receiving Board benefits (the "Claimant"), and (2) an eligible insurance claim exists with PMMIC; and

WHEREAS, the Board evaluated the transfer of such liabilities pursuant to the criteria contained in 591 Iowa Admin. Code 9.3, and deems the transfer to be in the best interest of the program; and

WHEREAS, the Board has considered the practicability of seeking competitive public bids pursuant to 591 Iowa Admin. Code 9.5, and determines public bidding is not practical because the Claimant already has an eligible insurance claim with PMMIC, PMMIC is already involved in funding a portion of the corrective actions at the site, a transfer of liabilities to PMMIC will provide a single source of funding and management to the claim, and it is unlikely another party can provide as efficient and cost-effective services under the circumstances;

THEREFORE, in consideration of the commitments made herein, the Board and PMMIC agree as follows:

1. **Term.** The term of this Agreement shall begin upon its execution by both parties hereto and shall run for one calendar year from the date of execution. At its sole discretion, the Board shall have the option to extend this Agreement for additional one-year terms. In addition to the Board's option to extend this Agreement, the Board and PMMIC may mutually agree to extensions of this Agreement. An extension of this Agreement is not, itself, a separate agreement, and does not require public bidding. Either party may terminate this Agreement, with or without cause, upon thirty (30) days notice to the other party.
2. **Third Party Review.** For UST sites covered by this Agreement, the Board and PMMIC will contract with a mutually selected third party to evaluate the nature and scope of the contamination.
  - a. Upon completion of the review, the third party will recommend an allocation of liability for reimbursement of corrective action costs between the Board and PMMIC. If

the proposed allocation is acceptable to both the Board and PMMIC, they shall adopt the recommendation of the third party pursuant to the terms of this Agreement.

b. Notwithstanding the provisions of paragraph 2(a) of this Agreement, if the adopted allocation shows either the Board or PIMMIC is 5% or less liable for reimbursement of corrective action costs at the site, and the total estimated corrective action costs are less than \$100,000, that party shall not be responsible for any costs associated with the review or future corrective action costs, and the entirety of those costs shall be the responsibility of the party found to be 95% or more responsible by the reviewer.

3. **Claimant Release.** If the Board and PMMIC agree to the transfer of the Board's liabilities to reimburse claims to PMMIC pursuant to Iowa Code section 455G.6(17) (2012), the Claimant shall be made fully aware of the findings of the third-party review, the terms and conditions of this Agreement, and the impact such a transfer will have on their benefits from the Board as follows:

a. The Board shall inform the Claimant of the findings of the third-party review and the proposed transfer of liabilities to PMMIC. The Board shall then obtain the Claimant's agreement to such transfer by execution of the Claimant Agreement, Waiver and General Release attached hereto as Exhibit A.

b. PMMIC shall provide a complete copy of this fully executed Agreement to the Claimant, in accordance with the liabilities assumed by PMMIC in this Agreement. The terms of the agreement shall contain a clear disclosure regarding the applicability of Iowa Code chapter 515B in the event PMMIC becomes insolvent; and

4. **Transfer of Liabilities.** Each site or group of sites, for which the provisions of paragraphs 2 and 3 of this Agreement have been satisfied, shall be added to a schedule attached hereto and marked as Exhibit C. Every new edition of Exhibit C shall be signed as acknowledgement by both parties.

a. For each site contained in the schedule, PMMIC shall assume any and all known and unknown liabilities of the Board under Iowa Code sections 455G.9 and 455G.21 to reimburse Claimants. PMMIC shall assume no less liability to reimburse the Claimant than the Board's liabilities as outlined in Iowa Code sections 455G.9 and 455G.21 and 591 Iowa Administrative Code 11.

b. As used in this Agreement, the "liabilities" of the Board being transferred to PMMIC are all present and future duties of the Board to reimburse Claimants for corrective action costs pursuant to Iowa Code sections 455G.9 and 455G.21. Liabilities that may be created by future amendments to sections of 455G other than sections 455G.9 or 455G.21 are not liabilities transferred pursuant to this Agreement.

c. Notwithstanding language in this Agreement to the contrary, this Agreement does not apply to reimbursement claims for the permanent closure of a UST system pursuant to

Iowa Code section 455G.9(1)(l) (2012), or for assessment and corrective action costs conducted pursuant to an agreement with the Iowa Department of Natural Resources as authorized by Iowa Code section 455G.9(1)(k) after a no further action certificate has been issued. The Board will retain liability for such claims and activities unless otherwise agreed to by the parties in writing, and included in the attached schedule, Exhibit C.

d. By assuming the Board's liabilities in this paragraph 4, PMMIC hereby agrees to assume any and all related responsibilities and activities of the Board related to those liabilities, including but not limited to, project funding and management, claim adjustment, and consultation with Claimant, contractors and the Iowa Department of Natural Resources. PMMIC's liabilities and responsibilities, however, are not subject to future amendments to Iowa Code chapter 455G or Board rules, and PMMIC is not restricted from offering benefits in excess of the statutory and regulatory authority granted to the Board.

e. The Board shall continue to allow PMMIC and the Claimant access to, and copies of, information contained in Board documents and files related to the site. The Board, however, shall cease to maintain any other ongoing duty whatsoever to PMMIC or the Claimant for those liabilities transferred.

5. **Transfer of Funds.** For each site added to the schedule identified in Paragraph 4 of this Agreement, the Fund shall pay PMMIC a one-time payment for the transfer of liabilities in an amount to be determined according to a mutually agreeable estimate of required actions to reach No Action Required classification. The initial estimate shall be provided by the consultant(s) providing service to the claimant(s) at the site. The parties may seek additional estimates if one or both parties think it would be advantageous to an equitable transfer. The estimate shall include future activities, timing of activities and costs of activities. The projected schedule of activities and costs will be present valued, using the most recently published CAFR investment rate. The parties may mutually agree upon inflation rate, if the estimate does not address the presence or lack of potential inflation. Additionally, the parties may also agree upon a risk factor to be included in calculations when there is consensus that risk significant risk exists that may result in the estimate being exceeded or falling well short based on potential early closure or additional work being required.

a. If the payment offered for the transfer of liabilities is accepted by PMMIC, PMMIC agrees to accept that payment as the full and final payment it will receive from the Board for its assumption of the Board's liabilities. PMMIC hereby waives any and all rights it may have, or may ever have, to seek additional funds from the Board in relation to the liabilities transferred. This waiver includes any additional funds from the Board for future amendments to Iowa Code sections 455G.9 or 455G.21 that would otherwise grant increased benefits from the Board for the liabilities transferred to PMMIC.

b. For liabilities transferred to PMMIC, the Board waives any refund of funds from PMMIC for future amendments to Iowa Code sections 455G.9 or 455G.21 that may reduce PMMIC's liability to Claimants.

6. **Annual Reporting.** PMMIC agrees to provide the Board with ongoing information and data for each site listed in the attached schedule, Exhibit C, that will allow the Board to accurately determine the amounts paid by PMMIC for liabilities transferred to PMMIC under this Agreement. Such information and data shall be provided for each site on at least an annual basis from the date of this Agreement until the site achieves a No Further Action designation. Upon mutual agreement between PMMIC and the Board, such information and data may be shared on a more frequent or ongoing basis.

7. **General Release.** In consideration for receipt of the funds described in paragraph 5 of this Agreement, PMMIC hereby releases, acquits, and forever discharges the Board and its officers, employees, assigns, agents, and successors in interest from any and all claims, rights, demands, actions, obligations, liabilities, and causes of action of any and every kind, nature, and character whatsoever, known or unknown, whether based on federal, state, or local law, or for claims based on tort, contract (implied, oral, or written), or any other theory of recovery, and whether for compensatory or punitive damages, for any matter related to or concerning the sites covered by this Agreement.

8. **Indemnification.** PMMIC agrees to indemnify and hold harmless the Board against any and all loss, liability, expenses and costs (including attorneys' fees, judgments and amounts paid in settlement) actually and reasonably incurred by the Board in connection with any threatened, pending, completed or future action, suit, or proceeding to which the Board is, or is threatened to be, made a party arising from or related to the liabilities transferred in paragraph 4 of this Agreement.

9. **Dispute Resolution.** Notwithstanding any language in this Agreement to the contrary, PMMIC does not waive any claims or actions that specifically arise from or concern the terms of this Agreement. The Party agree that the proper venue for any lawsuit is only Polk County District Court.

10. **Addresses.** The Party' address and fax numbers for official communications and notices are:

PMMIC  
2894 - 106th Street  
PO Box 7628  
Urbandale, IA 50323  
(Tel.) 515-334-3001  
(Fax) 515-334-3013

Iowa Underground Storage  
Tank Fund Board  
2700 Westown Parkway, Suite 320  
West Des Moines, IA 50266  
(Tel.) 515-225-9263  
(Fax) 515-225-9361

Either party may change their address or fax number by notifying the other party, in writing, of any change.

11. **Public Record.** The parties acknowledge this Agreement is a public record under Iowa Code chapter 22, and is available for public inspection and copying.

12. **Titles.** Paragraph titles are provided for the parties convenience and do not limit the scope or meaning of any paragraph.

13. **Joint Drafting.** This Agreement was drafted jointly by the parties and shall not be construed in favor of, or against, either party because of which party was responsible for drafting a particular portion of the Agreement.

14. **Complete Agreement.** This Agreement reflects the parties entire agreement on this matter and may not be altered or amended except by a subsequent written document signed by all parties to the Agreement.

15. **Authority to Sign.** The parties, and their representatives, by signing below, acknowledge that they have complied with all the legal requirements for approval of this Agreement and that their representatives are authorized to bind their respective agencies or bodies by their signatures to this contract.

16. **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, Iowa law.

17. **Execution.** All parties are executing this Agreement solely in reliance upon their own knowledge, belief and judgment and not upon any representations made by any of the other party hereto or others on their behalf.

IOWA UNDERGROUND STORAGE  
TANK FUND BOARD

PETROLEUM MARKETERS  
MANAGEMENT INSURANCE CO.

By: \_\_\_\_\_  
Scott Scheidel, Fund Administrator

By: \_\_\_\_\_  
Patrick Rounds, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PROPOSAL FOR LOSS PORTFOLIO TRANSFER TO  
IOWA COMPREHENSIVE PETROLEUM  
UNDERGROUND STORAGE TANK FUND BOARD**

**FROM**

**PETROLEUM MARKETERS MANAGEMENT  
INSURANCE COMPANY**

**August 23, 2012**

Pursuant to the authority granted to the board in IAC 591--9.1 (455G.6(17)), Petroleum Marketers Management Insurance Company (PMMIC) hereby proposes to enter into a agreement with the board to transfer the board's liabilities associated with 17 claims identified in Appendix 1, for a lump sum fee of \$400,000.000TBD

This proposal focuses on a small and unique number of claims which have been grouped together based upon the value to both the UST Fund and PMMIC to reduce overlapping oversight and administration.

PMMIC and the UST Fund have a unique relationship on each of the sites included in this proposal:

- PMMIC and the UST Fund both have open claims on each of the 17 sites.
- Each of the sites have experienced multiple petroleum releases from regulated UST systems with a commingled plume or area of impacted soil and groundwater for which a single corrective action plan has been developed to address the multiple releases.
- The sites included in this portfolio each have active UST facilities that are insured for future releases with PMMIC.
- On each site, the administrator and PMMIC have agreed to a cost share agreement based upon a third-party evaluation of the responsibility associated with the UST Fund claim and the PMMIC insurance claim.
- Detailed cost estimates have been developed for the corrective action required at each site.

These sites present a unique opportunity for the UST Fund and PMMIC to eliminate redundant administrative oversight and to streamline the corrective action process for the responsible party and the contractor conducting the corrective action. Because PMMIC maintains potential liability for third party damages resulting from the release covered by the PMMIC policy, it is logical that if only one funding source is going to manage the corrective action oversight, it should be PMMIC.

This unique overlap of corrective action responsibility, PMMIC's potential liability for third party damages related to the commingled plume, and PMMIC's ongoing insurance relationship for possible future releases, it would be ineffecient for any party other than PMMIC to administer these claims, and therefore it is impractical to bid this transaction pursuant to IAC 591 – 9.5. As a result, the parties have jointly developed the corrective action plans, projected loss costs and preliminarily negotiated the value of the transfer to obtain a value that is fair to both parties.

As in any transfer of liabilities, there is uncertainty in future implementation. Although formulas are used to address corrective action costs, inflation rates and interest rates, there is no way to *prove* future costs today. The parties acknowledge that there may be excessive loss development, changed market factors, increased service costs, regulatory changes, tax changes and other unknowns that could impact the ultimate payout. The transferring party (the UST Fund) is absolutely done for a fixed, unchanging price, but the accepting party is subject to risk. As a result of the unknown, after best efforts are applied to project future costs, a risk premium is added to address generally known, but unpredictable cost increases.

In this transaction, the parties have agreed to utilize:

- A seven year payout based upon the maturation of the claims and the projected scope of work;
- An inflation factor of 1.75% annually, which was obtained from the US department of labor;
- An interest rate of 4%, to discount future cash flows which was obtained from the Iowa Dept. of Revenue;
- A tax rate of 3.5%, based upon federal and state income tax tables;
- A risk premium of 10%. Over the past six years, the UST Fund open claims have experienced a 45% loss development rate. As part of this transaction, the parties have agreed to a 10% risk premium over the seven year estimated payout. We have agreed to this reduced rate based upon the maturity of the claims and our current oversight of the claims.
- No administrative costs have been included in the transaction.

As an added level of protection for the claimants involved, the parties agree that each claimant elect to opt out of the agreement and agree to have the Board continue to be responsible for the UST Fund liability. If any of the claimants chose not to participate, the value of the non-participating site will be reduced from the agreement.

Ultimately, the decision to exercise board authority comes down to whether it is an appropriate settlement for the board based upon the criteria outlined in IAC 591– 9.3. We believe this proposal complies with those criteria:

1. The proposed cost is more than \$00000 TBD less than the reserves on these files previously projected by the board. In addition, the board will not be subject to the adverse loss development that can occur over the years a claim remains open.
2. Based upon PMMIC's motivation to eliminate potential third party liability, and based upon PMMIC's intent to stimulate claims activity, these sites should be closed in less time than if the claims continued to be administered jointly by the two funding sources.
3. PMMIC is qualified to manage the claims.

- a. PMMIC has presented this transaction to the Iowa Division of Insurance who have stated no regulatory concerns with this transaction.
  - b. PMMIC has approximately 120 open claims today, PMMIC professionals previously administered the Iowa UST Fund from 1994–1999, and have experience with over 8000 environmental claims nationwide.
  - c. PMMIC had documented knowledge of Iowa’s corrective action guidelines, is currently overseeing each of these claims, has staff that participated in the Technical Advisory Committee that developed Iowa’s corrective action guidelines and are currently participating in the evaluation of the corrective action models utilized by IDNR.
4. This transaction will not negatively affect other claims not included in the transaction and may free up UST fund staff to provide additional oversight to remaining UST Fund claims.
    - a. Corrective action will be expedited on the subject sites based upon less administrative delays caused by joint oversight of the commingled plumes and should allow greater attention by UST Fund staff on the remaining open claims which should expedite additional corrective action.
    - b. These claims and the unique circumstances associated with them create the best scenario for a transfer and end to the boards’ liabilities for 17 sites. This transaction will assist the board to reevaluate it’s remaining long-term liabilities and will allow the board to determine if this type of transaction can satisfy these criteria if applied to other sites. This transaction should not have an impact on the boards remaining liabilities.
  5. Each claimant will have the ability to opt out this transaction. Thus each claimant can determine if their rights are being protected. The oversight of the attorney general/board counsel will also assist to ensure that each claimant’s statutory rights have been protected.
  6. The Board and PMMIC entered into a similar transaction in 2007 involvign 10 claims.

PMMIC appreciates the Board’s consideration of this proposal.

APPENDIX 1

PROPOSED LPT CALCULATIONS

**435,680.80**

	<u>Equal Distribute</u>			
	<u>with 1.7%</u>			
	<u>Inflation</u>			
Year 1				
Year 2			Base Reserve	
Year 3			Figure	
Year 4			Risk Premium	
Year 5			<hr/>	10.0
Year 6			Total to be	
Year 7			discounted	
			\$	
<hr/>				
Sum of Payments				
Sum of Payments				
w/Inflation				
<b>Net Present Value</b>				
One time tax		3.50%		
Payment Including Tax				

<u>Site</u>	<u>Agreed Amt</u>	<u>Fund Split</u>	<u>Fund Share</u>	<u>Fund Reserve</u>	<u>Fund Pa</u>
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Totals

**APPENDIX 2**

**DOCUMENTS TO BE UTILIZED FOR PROPOSED TRANSACTION**

**Sent under separate cover already**

**APPENDIX 3**  
**OFFERORS RELEVANT EXPERIENCE**

**ENVIRONMENTAL CLAIMS MANAGEMENT  
EXPERIENCE: OVER 8000 ENVIRONMENTAL CLAIMS**

*Petroleum Marketers Management Insurance Company (PMMIC)* staff has investigated, evaluated, and resolved environmental, (specifically UST,) claims in 46 states and Canada with over 20 years experience in handling UST claims in the State of Iowa. This experience includes addressing significant bodily injury, property damage, and corrective action claims. The staff has background in establishing and administering effective cost control measures in dealing with expenses relating to assessment and remediation of environmental damages.

Having provided the administration of state environmental programs, *PMMIC* staff has considerable experience in a large number of diverse cases. Including insurance industry experience, they have handled and or managed over 8000 cases involving environmental (UST) contamination.

*PMMIC* staff has developed and documented proven procedures specifically designed to establish and assure consistent and cost effective environmental solutions.

*PMMIC* staff has worked closely with IDNR and other regulatory representatives. They have participated with IDNR in the Kaizen and Business Improvement Process, USEPA trainers in training sessions in conjunction with state UST regulatory agencies, and worked with regulatory agencies to devise and implement new programs such as RBCA and Pay for Performance.

*PMMIC* staff has prepared cost guidelines and expense ranges for various environmental services to insure cost effectiveness is achieved in the cases they oversee and manage.

*PMMIC* staff is experienced in conducting environmental field investigations to gather relevant issues in environmental claims. This allows them to evaluate exposures and provide guidance in the implementation of assessment or remedial activities. The staff includes investigators who are 40 hour OSHA certified to perform hazardous site investigations.

*PMMIC* staff has worked with the environmental consulting industry extensively which has provided them with unique insight relating to cost control issues in environmental cases. Background in the issuance of Requests for Proposals (RFPs), environmental contracting procedures, the development and operation of a proprietary database utilized to manage and track claims, and the development and administration of a pre-budget approval processes all provide *PMMIC* with the necessary tools to maximize efficiency in managing environmental claims.

Sites with shared liability between UST Fund and PMMIC  
8/14/12 (excl prior LPT sites)

						IUSTF Reserve Balance (6-11-12)	PMMIC Reserve Balance (8-5-11)	FR Status	Groundwater Professional Estimate	PMMIC share	Fund Share
1	8601819 (IUSTF = 15% / PMMIC = 85%)	S. Cent. COOP	Lacona	High	Barker Lemar	24,564.54	15,000.00	PMMIC	47,750.00	40,587.50	7,162.50
2	8602918 (IUSTF = 10% / PMMIC = 30% / RP = 60%)	River Valley	Durant	High	Seneca Dvpt.	14,249.62	na	closed	355,000.00	106,500.00	35,500.00
3	8603271 (IUSTF = 75% / PMMIC = 25%)	Raine	Humboldt	Low	Apex	12,956.81	na	closed	5,500.00	1,375.00	4,125.00
4	8603853 (IUSTF = 50% / PMMIC = 50%)	Cig Outlet	Washington	High	Seneca Dvpt.	9,905.28	20,000.00	PMMIC	5,000.00	2,500.00	2,500.00
5	8604799 (IUSTF = 35% / PMMIC = 65%)	Casey's	Cedar Rapids	Low	Barker Lemar	5,737.64	na	Self Assurar	17,500.00	11,375.00	6,125.00
6	8604865 (IUSTF = 35% / PMMIC = 65%)	KG/Bro, Afton	Afton	High	Barker Lemar	9,989.70	na	closed	14,100.00	9,165.00	4,935.00
7	8607024 (IUSTF = 20% / PMMIC=80%)	KG/Bro	Winterset	High	Barker Lemar	55,805.48	25,000.00	PMMIC	325,000.00	276,250.00	65,000.00
8	8607082 (IUST = 75/15% // PMMIC = 25/85% RBC)	Bumper to Bumper	Olwein	High	VJ	100,921.99	25,000.00	PMMIC	144,055.00	36,013.75	108,041.75
9	8607932 (Soil (PMMIC), GW (mixed))	JOCO	Bettendorf	Low	Terracon Dvpt.	13,289.33	30,000.00	PMMIC	7,500.00	750.00	6,750.00
10	8608458 (IUSTF = 85% / PMMIC = 15%)	QT/Music Station	Cedar Falls	Low	Apex	17,968.74	25,000.00	PMMIC	60,000.00	9,000.00	51,000.00
11	8608757 (IUSTF = 75% / PMMIC = 25%)	Country Store	Onawa		RDG	62,581.08	na	closed	7,625.50	1,906.38	5,719.12
12	8710384 (IUSTF = 25% / PMMIC = 75%)	Jott/Johnson	Mt. Vernon	High	Barker Lemar	41,032.18	15,000.00	PMMIC	240,000.00	180,000.00	60,000.00
13	8710665 (IUSTF = 20% / PMMIC = 80%)	Taylor Quik Pik	Missouri Valley	Low	RDG	12,425.33	15,000.00	PMMIC	137,237.90	109,790.32	27,447.58
14	8603566 (NFA claim - 40% IUST / 60% PMMIC)	Farmers Coop	Fredricksburg	High	Blackhawk	18,182.51	na	PMMIC	63,689.00	38,213.40	25,475.60
15	8710504 (NFA claim - 35% PMMIC / 65% IUSTF)	former KG	Ellsworth	High	Seneca	32,827.25	na	closed	41,130.00	26,734.50	14,395.50
16	8606451 NFA 28E site - 12.5% IUST, 80% PMMIC	former Amoco	Stuart	High	Seneca	7,644.83	na	closed	24,080.00	19,264.00	3,010.00
17	8608410 NFA 28E (85% PMMIC -- 15% IUSTF)	former KG	Sioux City	High	Seneca	14,040.30	na	closed	56,625.00	38,213.40	8,493.75

454,122.61

1,551,792.40 907,638.25 435,680.80

August 16, 2012

Site #  
Address  
Lust #  
Re: IUST Fund

Dear Policyholder:

As your insurer, PMMIC is interested that the monies collected by the IUST Fund, as prescribed in the enabling legislation, are utilized to cleanup the eligible sites those funds are earmarked for. Your site above that was or continues to be insured by PMMIC has been identified as one of those eligible sites.

As an insurance company, domiciled in Iowa and owned by you, the stockholders, it is in the interest of PMMIC to assure these funds from the IUST Fund are spent where they were intended to be. If the funds collected continue to be diverted to the state general fund for purposes they were not intended for, the greater the risk that your site will not have adequate funding to respond to the IDNR requirements for your site, or that other issues may arise that could potentially affect your business such as third party claims being made on you by neighbors due to the required cleanup not being completed in as timely a manner as possible. These issues could also potentially affect your future insurance premiums with PMMIC.

A proposal has been made to transfer adequate funds to PMMIC to assure the cleanups are completed in as efficient and timely manner as possible at these eligible sites, the term for this type of transaction is a Loss Portfolio Transfer (LPT.) An LPT is used in the insurance industry when a particular insurer may elect not to underwrite a certain type of business any longer and in other situations where it is necessary to transfer the liabilities from one company to another for an agreed upon price.

The LPT proposal would include a mechanism that would allow both parties, the IUST Fund and PMMIC to have input into determining the overall price of the transfer. This would assure that everyone agrees on the appropriate price and not too much or too little money would be transferred. There would also be a voluntary aspect to the transfer that would allow you, if you do not want to participate, to opt out of the transfer by signing the attached form. This assures that you, and each party involved, agrees to participate in the transfer.

The IUST Fund has approximately 800 open claims that continue to be addressed. Approximately 150 or more of these sites continue to be insured by PMMIC so roughly 20% of the eligible claims from the IUST Fund could be candidates for an LPT. Of these 200 sites, of which yours above is identified as one of, that did or are the sites that continue to operate and supply fuel to the people of the state, and are the sites that generate the fees that continue to serve as a source of revenue for the IUST Fund.

We have initially identified 17 sites, of the 200 that have both PMMIC and IUST Fund eligible claims, yours is one of these 20 sites. Our proposal is to transfer these 20 for an agreed upon amount of funds from the IUST Fund to PMMIC to handle these claims to conclusion. We have enclosed the opt-out form, if you do not want to participate in the transfer execute the form and send the original back to us in the envelope provided. There will be no apparent change to the way the claim at your site is handled in the future except that you will be dealing solely with PMMIC on the funding of the claim until your site has reached No Further Action status from the IDNR.

The PMMIC Board of Directors fully supports this proposal. This proposal of the LPT with PMMIC keeps the money in the state of Iowa and puts Iowans to work with money from Iowans.

**Opt Out Form Iowa Comprehensive Petroleum Underground Storage Tank Fund  
Board Claim To Petroleum Marketers Management Insurance Company For  
Claimant**

An agreement is anticipated between the claimant, as referred to by the UST Board, and Petroleum Marketers Management Insurance Company (PMMIC). The Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ("Board"), an Iowa governmental agency created pursuant to Iowa Code chapter 455G, and the Petroleum Marketers Management Insurance Company ("PMMIC"), an Iowa corporation, have agreed to transfer the liabilities associated with the eligible claim described in this document with the claimant(s) listed below for an agreed upon amount. The purpose of this form is to allow claimants who do not wish to participate in this transfer to opt-out of the transaction.

Site Name, Description, and Address:

\_\_\_\_\_

Site Registration Number and LUST  
Number: \_\_\_\_\_

Board claim Number(s), PMMIC Claim  
Number(s): \_\_\_\_\_

**I DO NOT WISH TO INCLUDE MY SITE IN THIS TRANSACTION AND AM  
REJECTING THE OPPORTUNITY TO DO SO BY EXECUTING THIS DOCUMENT.**

CLAIMANT(S)

NAME: x \_\_\_\_\_

PRINT NAME AND TITLE \_\_\_\_\_

DATE: \_\_\_\_\_

**F. Iowa Department of Transportation -  
Sioux City Garage Settlement**



# IOWA UNDERGROUND STORAGE TANK FUND

Douglas M. Beech, *Chairperson*

Scott M. Scheidel, *Administrator*

*Board Members:*

Michael L. Fitzgerald

Chuck Gipp

Joseph D. Barry

Dawn M. Carlson

Eric W. Johnson

Jeff W. Robinson

Karen E. Andeweg

**TO:** UST Board

**FROM:** Scott M. Scheidel

**SUBJECT:** Iowa Dept of Transportation LUST Site, Hamilton Blvd., Sioux City  
UST # 198609323 LUST # 7LTD77

**DATE:** August 15, 2012

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Petroleum contamination was identified at the referenced Iowa Department of Transportation (IDOT) facility was identified in June 1989 and an eligible remedial claim was established in December 1990. Based on the presence of contamination and proximity to multiple receptors, including two municipal water well fields, the Department required DOT take prompt action and in the early 1990's the IDOT commenced remediation work. In 1994, IDOT opted to install a new remediation system however due to questions regarding the DNR approval and the system's need and effectiveness funding for work was placed on hold. Prior to this, the UST Fund had already paid \$452,889.91 in expenses related to corrective action work.

Due to the proximity of the municipal wells and subsequent detection of MTBE and TBA in the city wells, the DOT completed extensive monitoring and plume evaluations to show that the contamination from the subject site is stable and is not migrating toward the municipal well fields. Based on the data collected, the IDOT has made a request that all work cease and a no action required classification be assigned. In a recent letter, DNR however denied that request and thus, further corrective action activities are possible.

The claimant continues to submit requests to the Board for reimbursement of costs associated with the site and as of May 2012, had incurred costs of \$1,571,515.16. In an effort to settle the past claims, a settlement agreement was developed to finally and fully resolve all past disputes concerning reimbursable costs. The attached agreement, which has met IDOT approval, would include a payment in the amount of \$160,478.00 for all corrective action costs incurred as of the date of the agreement, would deem all co-payment requirements satisfied, and would release the Board for any further consideration of past costs incurred by the claimant. The agreement would allow the claimant to seek benefits for future expenses related to the site.

We recommend approval of the agreement as presented and request the Board grant authority for future expenses on this project as follows:

Paid to date:		\$452,889.91
Settlement Agreement:		\$160,478.00
Total (past expenses):		\$613,367.91
Projected costs for future work:	\$50,000 - \$100,000	
Recommended Authority for future work:		\$700,000.00

## AGREEMENT AND GENERAL RELEASE

This Agreement and General Release ("Agreement") is entered into between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ("Board") and the Iowa Department of Transportation ("Claimant") in order to resolve disputes concerning Claimant's remedial account claim to the Board under Iowa Code section 455G.9 for corrective actions costs related to the underground storage tank site identified as Registration Number 8609323 LUST Number 7LTD77 as registered with the Iowa Department of Natural Resources ("Site").

1. The Claimant has in the past submitted requests to the Board for reimbursement of costs associated with the Site. Although the Board has approved certain costs, it has denied other costs as not reimbursable corrective action costs. In order to finally and fully resolve all past disputes concerning reimbursable costs, the Board agrees to pay the Claimant \$160,478.00 in benefits for costs incurred by the Claimant as of the date this Agreement. Furthermore, the Board will deem all co-payment requirements imposed on Claimant pursuant to Iowa Code section 455G.9 fully satisfied, and hereby release Claimant from any future co-payment obligations.

2. The Claimant agrees to accept the amount set forth in paragraph 1 of this Agreement as the full and final payment it will receive from the Fund for Claimant's corrective action costs incurred at the Site as of the date of this Agreement. Claimant hereby waives any and all rights to seek additional funds from the Board for costs incurred in relation to the Site prior to the date this Agreement is fully executed, and does hereby release, acquit, and forever discharge the Board and its officers, employees, assigns, agents, and successors in interest from any and all claims, rights, demands, actions, obligations, liabilities, and causes of action of any and every kind, nature, and character whatsoever, known or unknown, whether based on federal, state, or local law, or for claims based on tort, contract (implied, oral, or written), or any other theory of recovery, and whether for compensatory or punitive damages related to the Site for past claims for benefits pursuant to Iowa Code chapter 455G.

3. Notwithstanding any language in this Agreement to the contrary, the Board and Claimant do not waive any claims or actions that may arise from this Agreement or are based on facts or events occurring after the date this Agreement is fully executed. Furthermore, the Claimant does not waive its right to seek benefits from the Board for future expenses related to the Site.

4. Except as specifically addressed in this Agreement, the Agreement shall not affect the rights and responsibilities of the Board and Claimant under Iowa Code chapter 455G and Board regulations contained in the Iowa Administrative Code, including, but not limited to, the requirement that all future reimbursement requests by Claimant shall remain subject to preapproval by the Board.

5. The parties acknowledge that this Agreement is a public record under Iowa Code chapter 22, and is available for public inspection and copying.

6. This Agreement contains the entire understanding of the Board and Claimant regarding

this subject matter and may not be changed or amended in any way except by a written instrument signed by all parties to the Agreement.

7. This Agreement shall be governed by and construed in accordance with Iowa law.

8. This Agreement is effective as of the date it is fully executed by all parties.

9. All parties are executing this Agreement solely in reliance upon their own knowledge, belief and judgment and not upon any representations made by any of the other parties hereto or others on their behalf.

Dated this \_\_\_\_ day of August 2012.

**Iowa Department of Transportation**

By: \_\_\_\_\_  
James P. Rost, Director, Office of Location and Environment

**Iowa Comprehensive Petroleum Underground Storage Tank Fund Board**

By: \_\_\_\_\_  
Scott M. Scheidel, Administrator

## **G. DNR Update**