

Chapter VII

UST FUND

Robert C. Galbraith  
Office of Iowa Attorney General  
Des Moines, Iowa

CHAPTER NO. VII  
UST FUND

TABLE OF CONTENTS

<b>I. Overview</b> .....	7-1
A. Historical Background .....	7-1
B. Initial Iowa UST Fund Legislation - Purpose, Intent and Overview.....	7-2
C. UST Fund Board Relationship with DNR .....	7-4
<b>II. Scope and Applicability of Iowa Code Chapter 455G</b> .....	7-4
<b>III. Definitions</b> .....	7-7
A. General.....	7-7
B. Specifically Defined Terms .....	7-8
<b>IV. Creation of the UST Fund</b> .....	7-11
<b>V. UST Fund Board</b> .....	7-12
<b>VI. UST Fund Board Contracts</b> .....	7-13

A.	Public Bidding .....	7-13
B.	Contract Approval .....	7-14
C.	Independent Contractors - UST Fund Administration.....	7-14
<b>VII.</b>	<b>UST Fund Board - General and Specific Powers.....</b>	<b>7-15</b>
<b>VIII.</b>	<b>Revenue Sources for the UST Fund .....</b>	<b>7-17</b>
A.	Bonds.....	7-17
B.	Use Tax.....	7-18
C.	Storage Tank Management Fees.....	7-18
D.	Insurance Premiums .....	7-19
E.	Cost Recovery Enforcement.....	7-19
F.	Other Sources .....	7-19
<b>IX.</b>	<b>Remedial Program .....</b>	<b>7-19</b>
A.	Overview .....	7-19
B.	Remedial Program Funding - Trust Fund.....	7-20
C.	Categories of Remedial Program Claimants and Eligibility Requirements .....	7-20
1.	Retroactive Claims.....	7-20
a.	Releases Reported to DNR: 1/1/84 - 7/1/87 .....	7-20

b.	Released Reported to DNR - 7/1/87 -	
	5/5/89.....	7-22
2.	Remedial Claims .....	7-23
3.	Financial Hardship Claims .....	7-24
4.	Financial Institutions .....	7-25
5.	Counties - Delinquent Property Taxes.....	7-25
6.	State Owned and Operated USTs .....	7-26
7.	Property - Inheritance, Bequest, or	
	Devise.....	7-27
8.	Governmental Subdivisions .....	7-28
9.	No Further Action Sites.....	7-28
D.	Nature and Limitations On Remedial Program Benefits .....	7-29
1.	General .....	7-29
2.	USTs Not Eligible for the Remedial Program .....	7-29
3.	Proof of Financial Responsibility	
	Requirement.....	7-30
4.	Corrective Action Costs.....	7-30
a.	UST Upgrades.....	7-31
b.	Monitoring Costs.....	7-31

c.	SCR Costs.....	7-31
5.	Maximum Remedial Program Benefits .....	7-32
6.	Copayments and Deductibles .....	7-32
a.	No Deductible or Copayment.....	7-32
b.	Eighteen Per Cent Copayment.....	7-32
c.	Standard Copayment/Deductible.....	7-33
7.	Recovery of Gain on Sale.....	7-33
8.	Recurring Releases .....	7-34
9.	DNR Required Corrective Action .....	7-35
10.	Owner or Operator for Remedial Program Purposes.....	7-35
11.	Self-Insurers Upgrade Deadline .....	7-35
12.	Impact of Insurance on Remedial Program Claims.....	7-36
13.	Cost Control and Budget Approval.....	7-36
14.	Excess Funds - Trust Fund.....	7-37
15.	Environmental Damage Offset.....	7-37
	<b>X. Marketability Fund and Innocent Landowners Fund .....</b>	<b>7-37</b>
A.	Background.....	7-37

B.	Marketability Fund.....	7-38
1.	Creation.....	7-38
2.	Funding.....	7-38
3.	Purpose.....	7-39
C.	Innocent Landowners Fund .....	7-39
1.	Creation.....	7-39
2.	Funding.....	7-40
3.	Purpose.....	7-40
4.	Eligibility of Criteria.....	7-40
a.	General.....	7-40
b.	Statutory Eligibility Requirements.....	7-40
c.	Board Eligibility Requirements.....	7-41
(1)	Late-filed Retroactive Claims .....	7-42
(2)	Preregulation Claims .....	7-42
(3)	Innocent Landowner Claims .....	7-43
5.	Additional Requirements and Innocent Landowners Benefits .....	7-44
XI.	<b>Loan Guarantee Program</b> .....	7-45

A.	Overview and Purposes.....	7-45
B.	Funding.....	7-46
C.	Terms and Conditions on Loan Guarantees.....	7-46
D.	Financial Institution Participation in the UST Fund.....	7-47
<b>XII.</b>	<b>Insurance Program.....</b>	<b>7-48</b>
A.	Overview.....	7-48
B.	Funding.....	7-49
C.	Owner/Operator Insurance.....	7-49
1.	Coverage.....	7-49
2.	Coverage Limits .....	7-50
3.	Eligibility .....	7-50
4.	Actuarial Sound Premiums.....	7-51
5.	Premium Discounts.....	7-52
6.	Deductibles.....	7-52
7.	Future Repeal .....	7-52
D.	Installer and Inspector Insurance.....	7-53
1.	Coverage.....	7-53
2.	Coverage Limits .....	7-53
3.	Premiums .....	7-53

4.	Deductible.....	7-54
5.	Excess Coverage .....	7-54
6.	Certification of UST Installations .....	7-54
7.	Coverage Alternatives.....	7-54
E.	Property Transfer Insurance.....	7-55
1.	Coverage.....	7-55
2.	Eligibility .....	7-55
3.	Premiums .....	7-56
4.	Coverage Limits .....	7-56
5.	Coverage Exclusions.....	7-56
6.	Annual Monitoring Requirement .....	7-57
7.	Transfer of Coverage.....	7-57
8.	Deductible.....	7-57
F.	Third-party Liability.....	7-57
<b>XIII.</b>	<b>Prioritization.....</b>	<b>7-57</b>
<b>XIV.</b>	<b>Cost Containment Authority.....</b>	<b>7-58</b>
A.	Overview.....	7-58
B.	Contract Validity .....	7-59
C.	UST Fund Board Contracting Authority.....	7-60

D.	Exclusive Contracts.....	7-60
E.	Prior Budget Approval by the Administrator .....	7-61
<b>XV.</b>	<b>Cost Recovery.....</b>	<b>7-61</b>
A.	Overview.....	7-61
B.	Cost Recovery Authority .....	7-62
C.	Eligible Claimants - Limited Liability and Exceptions .....	7-62
D.	Treble Damages.....	7-63
E.	UST Site Liens.....	7-64
F.	Joinder of Parties .....	7-64
G.	Standard of Liability.....	7-65
H.	Effect of Third-party Contracts .....	7-65
I.	Later Proceedings Permitted .....	7-65
J.	Relationship of Claimant and the Board in Cost Recovery Proceedings .....	7-66
K.	Limited Right of Recovery Against Installers and Inspectors.....	7-67
<b>XVI.</b>	<b>Installers and Inspectors - Education, Registration, Licensing and Insurance .....</b>	<b>7-67</b>
A.	Overview.....	7-67
B.	Rules Relating To Installer and Inspector Requirements.....	7-68

1.	Installers, Testers, Liners.....	7-68
a.	Installers.....	7-68
b.	Testers.....	7-69
c.	Liners.....	7-69
2.	Inspectors.....	7-69
3.	General Procedures.....	7-70
<b>XVII.</b>	<b>Groundwater Professional Certification Program</b> .....	<b>7-70</b>
A.	Background.....	7-70
B.	Groundwater Professional Requirements.....	7-71
1.	Groundwater Professional - Definition. ....	7-71
2.	General Certification Requirements.....	7-72
3.	Certification Procedures.....	7-73
a.	Applications.....	7-73
b.	Deadlines.....	7-73
c.	Continuing Education.....	7-73
d.	Suspension, Revocation, Denial of Certification.....	7-74
C.	Miscellaneous.....	7-74
<b>XVIII.</b>	<b>Administrative Proceedings</b> .....	<b>7-75</b>
<b>XIX.</b>	<b>Community Remediation</b> .....	<b>7-75</b>

## CHAPTER NO. VII -- UST FUND

By: Robert C. Galbraith

### I. Overview

#### A. Historical Background

Subtitle I of the federal Resource Conservation and Recovery Act (RCRA) was promulgated in 1984. 42 U.S.C. § 6991 (1991). Subtitle I imposes technical and financial obligations on owners and operators of certain underground storage tanks (USTs).<sup>1</sup> 42 U.S.C. § 6991 (1991).

On September 23, 1988, the United States Environmental Protection Agency (EPA), the federal agency charged with administering RCRA, Subtitle I, published final rules regarding UST technical requirements. 53 Fed. Reg. 37082 (1988) (subsequently codified at 40 C.F.R. pt. 280). These technical regulations require owners and operators of USTs containing regulated substances to investigate their UST sites, cleanup contamination discovered at those sites which was caused by releases from the USTs, and upgrade their USTs to ensure early detection of future releases from those USTs. 40 C.F.R. §§ 280.10-280.74 (1994).

---

<sup>1</sup> See Chapter VI of this handbook for the specifics of the technical and financial obligations imposed on owners and operators of USTs.

On October 26, 1988, EPA published final financial responsibility rules applicable to petroleum USTs. 53 Fed. Reg. 43322 (1988) (subsequently codified at 40 C.F.R. pt. 280). These financial responsibility regulations require owners and operators of USTs containing petroleum to have a method of financial responsibility in place to assure necessary financing of cleanup of contamination caused by future petroleum UST releases. 40 C.F.R. §§ 280.90-280.116 (1994).

Even at the time these regulations were promulgated, it was obvious that compliance with the regulations would be costly to the owners and operators of the USTs governed by the regulations.

#### **B. Initial Iowa UST Fund Legislation - Purpose, Intent and Overview**

In 1989, the Iowa legislature created a fund (UST Fund) to provide financial assistance to owners and operators of petroleum USTs to better enable them to comply with the UST regulations. 1989 Iowa Acts, ch. 131, § 44. The law creating the UST Fund was codified as Iowa Code chapter 455G.

In creating the UST Fund, the Iowa Legislature specifically found as follows:

Maintenance of Iowa's petroleum distribution network, particularly in rural Iowa, is dependent upon the provision of moneys to cleanup existing petroleum releases and the availability of financing at affordable interest rates for petroleum underground storage tank improvements to permit compliance with mandated federal technical and financial responsibility standards.

Private financing at low-interest rates for small business owners and operators of petroleum underground storage tanks is generally not available due to potential liability for petroleum releases which financial institutions are unwilling to incur and the high cost of compliance with federal regulatory standards.

It is necessary to provide a reasonable means to share the costs of cleanup of past and existing petroleum leaks to make the Iowa petroleum underground storage tank population insurable and environmentally safe, and to protect groundwater safety for the citizens of the state.

1989 Iowa Acts, ch.131, § 1.

In creating the UST Fund the Iowa Legislature specifically set out its intent as follows:

It is the intent of this Act to assist owners and operators, and especially small businesses, to comply with the minimum federal technical and financial responsibility standards and to protect and improve the quality of Iowa's environment by correcting existing petroleum underground storage tank releases and by prevention and early detection of future releases to minimize damages and costs to society.

Implementation and interpretation of this Act shall recognize the following additional goals: to provide adequate and reliable financial assistance for the costs of corrective action for preexisting petroleum underground storage tank releases; to create a financial responsibility assurance mechanism that provides certainty, sufficiency, and availability of funds to cover the costs of corrective action and third-party liability for prospective releases.

The fund created in this Act is intended as an interim measure to address the short-term unavailability of financial responsibility assurance mechanisms in the private market. This Act shall be administered to promote the expansion of existing assurance mechanisms and the creation of new ones, so that the insurance account may be phased out and discontinued when market mechanisms are generally available

1989 Iowa Acts, ch. 131, § 2.

The 1989 legislation creating the Iowa Comprehensive Petroleum Underground Storage Tank Fund (UST Fund) provided for a board (UST Fund Board) to administer the UST Fund Program. 1989 Iowa Acts, ch. 131, § 45. The legislation required that, at least, three accounts be established: 1) The remedial account was created to provide financial assistance to owners and operators to better enable them to pay for investigation and cleanup of existing contamination; 2) The loan guarantee account was established to guarantee loans to owners and operators to assist them in complying with the UST technical standards. 3) The insurance account was created to fund an insurance program to provide insurance to owners

and operators of petroleum USTs so they can comply with the financial assurance requirements. 1989 Iowa Acts ch. 131, § 44(3).

### C. UST Fund Board Relationship with DNR

In Iowa, the regulation and enforcement of the federal technical and financial responsibility regulations is administered by the Iowa Department of Natural Resources (DNR).<sup>2</sup> See Code of Iowa §§ 455B.471-479. DNR is the only Iowa state agency or department which has the authority to determine when remediation is to begin on an UST site. Code of Iowa § 455G.20. Conversely, the UST Fund Board has no authority to administer the regulation and enforcement of the federal technical and financial responsibility regulations. Rather, the UST Fund Board is a separate entity which administers the UST Fund to provide financial assistance to owners and operators of petroleum USTs so the owners and operators can comply with the UST regulations administered by DNR.

## II. Scope and Applicability of Iowa Code Chapter 455G

The provisions of Iowa Code chapter 455G set forth both the authority under which the UST Fund Board functions and the parameters within which the Board administers the UST Fund. The chapter is entitled the "Iowa Comprehensive Petroleum Underground Storage Tank Fund Act". Code of Iowa § 455G.1(1).

---

<sup>2</sup> See Chapter VI of this handbook for the specifics of DNR UST regulation and enforcement.

Iowa Code chapter 455G applies to petroleum underground storage tanks for which the owner or operator is required to maintain proof of financial responsibility under either federal or state law. Code of Iowa § 455G.1(2). In addition, if the chapter applies to an UST, that UST is also subject to Iowa Code chapter 424, which is the Iowa Code chapter governing the environmental protection charge. Code of Iowa § 455G.1(2). The environmental protection charge is a charge assessed when petroleum is deposited into an UST. Code of Iowa § 424.3(1). Iowa's Department of Revenue and Finance has a 28E agreement with the UST Fund Board to administer this environmental charge on petroleum diminution.

DNR regulates USTs containing regulated substances. Code of Iowa §§ 455B.471(11), 455B.474. Petroleum is a regulated substance. Code of Iowa § 455B.471(8). However, there are a large number of regulated substances which are not petroleum. Code of Iowa § 455B.471(8). Since Iowa Code chapter 455G only applies to USTs which contain petroleum, the universe of USTs regulated by DNR is far greater than the universe of USTs covered by the UST Fund.

RCRA Subtitle I excludes the following nine categories of USTs from regulation:

- (1) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.
- (2) A tank used for storing heating oil for consumptive use on the premises where stored.
- (3) A septic tank.
- (4) A pipeline facility, including gathering lines, regulated under any of the following:
  - (a) The federal Natural Gas Pipeline Safety Act of 1968.
  - (b) The federal Hazardous Liquid Petroleum Pipeline Safety Act of 1979.

(c) State laws comparable to the provisions of the law referred to in (a) or (b), above.

- (5) A surface impoundment, pit, pond, or lagoon.
- (6) A storm water or wastewater collection system.
- (7) A flow-through process tank.
- (8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.
- (9) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor to permit inspection of its entire surface.

42 U.S.C. § 6991(1)(A)-(I) (1993).

These nine types of USTs are also excluded from Iowa Code chapter 455G and the UST Fund Program. Code of Iowa § 455G.1(2)(a).

In addition, EPA has excluded the following eleven types of USTs from the federal financial responsibility requirements:

- (1) Underground storage tank systems not in operation on or after the applicable compliance date.
- (2) Those owned or operated by state and federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States.
- (3) Any underground storage tank system holding hazardous wastes listed or identifiable under subtitle C of the

federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(4) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the federal Clean Water Act.

(5) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and reservoirs and electrical equipment tanks.

(6) Any underground storage tank system whose capacity is one hundred ten gallons or less.

(7) Any underground storage tank system that contains a de minimis concentration of regulated substances.

(8) Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(9) Any underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. pt. 50, appendix A.

(10) Airport hydrant fuel distribution systems.

(11) Underground storage tank systems with field-constructed tanks.

40 C.F.R. §§ 280.10,.90 (1994).

These eleven types of USTs are also excluded from Iowa Code chapter 455G and the UST Fund Program. Code of Iowa § 455G.1(2)(b).

The UST Fund, including, but not limited to, the insurance account is not subject to federal and state securities laws. Code of Iowa § 455G.14. In addition, the UST Fund is not considered an insurance company or an insurer under Iowa law.

Code of Iowa § 455G.15. Finally, the UST Fund is not a member of the Iowa insurance guarantee association and cannot make claims against the association. Code of Iowa § 455G.15.

### **III. Definitions**

#### **A. General**

As with most environmental statutes, Iowa Code chapter 455G contains specifically defined terms which are instrumental in interpreting the various provisions of the chapter. Section III(B), below, sets forth these definitions, which are to be used throughout Iowa Code chapter 455G unless the context in which the terms are used requires a different definition.

Code of Iowa § 455G.2.

#### **B. Specifically Defined Terms**

"Authority" means the Iowa finance authority created in chapter 16. Code of Iowa § 455G.2(1).

"Board" means the Iowa comprehensive petroleum underground storage tank fund board. Code of Iowa § 455G.2(2).

"Bond" means a bond, note, or other obligation issued by the authority for the fund and the purposes of this chapter. Code of Iowa § 455G.2(3).

"Claimant" means an owner or operator who has received assistance under the remedial account or who has coverage under the insurance account with respect to a release, or an installer or inspector who has coverage under the insurance account. Code of Iowa § 455G.2(4).

"Community remediation" means a program of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or

federal law. Code of Iowa § 455G.2(5).

"Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwater or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare a site cleanup report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by a site cleanup report. Code of Iowa § 455G.2(6).

"Diminution" is the amount of petroleum which is released into the environment prior to its intended beneficial use. Code of Iowa § 455G.2(7).

"Diminution rate" is the presumed rate at which petroleum experiences diminution, and is equal to one-tenth of one percent of all petroleum deposited into a tank. Code of Iowa § 455G.2(8).

"Free product" means a regulated substance that is present as a nonaqueous phase liquid. Code of Iowa § 455G.2(9).

"Fund" means the Iowa comprehensive petroleum underground storage tank fund. Code of Iowa § 455G.2(10).

"Improvement" means the acquisition, construction, or improvement of any tank, tank system, or monitoring system in order to comply with state and federal technical requirements or to obtain insurance to satisfy financial responsibility requirements. Code of Iowa § 455G.2(11).

"Insurance" includes any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa department of natural resources' underground storage tank financial responsibility rules. Code of Iowa § 455G.2(12).

"Insurance premium" includes any form of premium or payment for insurance or for obtaining other forms of financial assurance, or showing of financial responsibility. Code of Iowa § 455G.2(13).

"Petroleum" means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute). Code of Iowa § 455G.2(14).

"Potentially responsible party" means a person who may be responsible or liable for a release for which the fund has made payments for corrective action or third-party liability. Code of Iowa § 455G.2(15).

"Precorrective action value" means the assessed value of the tank site immediately prior to the discovery of a petroleum release. Code of Iowa § 455G.2(16).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing from an underground storage tank into groundwater, surface water, or subsurface soils. Code of Iowa § 455G.2(17).

"Small business" means a business that meets all of the following requirements:

- a. Is independently owned and operated.
- b. Owns at least one, but no more than twelve tanks at no more than two different tank sites.
- c. Has a net worth of four hundred thousand dollars or less. Code of Iowa § 455G.2(18).

"Tank" means an underground storage tank for which proof of financial responsibility is, or on a date definite will be, required to be maintained pursuant to the federal Resource Conservation and Recovery Act and the regulations from time to time adopted pursuant to that Act or successor Acts or amendments. Code of Iowa § 455G.2(19).

"Third-party liability" means both of the following:

- a. Property damage including physical injury to tangible property, but not including loss of use, other than costs to remediate.
- b. Bodily injury including sickness, bodily injury, illness, or death. Code of Iowa § 455G.2(20).

#### **IV. Creation of the UST Fund**

The Iowa Comprehensive Petroleum Underground Storage Tank Fund (UST Fund) was created as a separate fund in the state treasury. 1995 Iowa Code Supp. § 455G.3(1). The UST Fund is structured so that it is isolated from other state funds. All income earned by the UST Fund remains in the UST Fund and the monies in the UST Fund are not subject to appropriation for purposes other than those set forth in Iowa Code chapter 455G. 1995 Iowa Code Supp. § 455G.3(1).

The UST Fund is administered by the UST Fund Board (Board).<sup>3</sup> 1995 Iowa Code Supp. § 455G.3(1). The UST Fund Board is to use UST Fund monies to assist owners and operators of USTs in Iowa in complying with the applicable federal technical and financial responsibility requirements. 1995 Iowa Code Supp. § 455G.3(2).

---

<sup>3</sup> The UST Fund Board is more fully described in section V of this chapter.

While the Board can divide the UST Fund into different accounts, it is required to have, at least, three accounts.

1995 Iowa Code Supp. § 455G.3(2)-(3). These required accounts are:

- 1) the remedial account used to fund corrective action as provided in Iowa Code section 455G.9;
- 2) the loan guarantee account used to fund the UST Fund Program's loan guarantee program under Iowa Code section 455G.10; and
- 3) the insurance account used to fund the UST Fund Program's insurance program under Iowa Code section 455G.11.

1995 Iowa Code Supp. § 455G.3(3).

The liability of the State of Iowa for claims or causes of action related to USTs not owned or operated by the State is limited to the liability of the UST Fund under Iowa Code chapter 455G. 1995 Iowa Code Supp. § 455G.3(4). In turn, the UST Fund's liabilities are limited to the monies in the UST Fund. 1995 Iowa Code Supp. § 455G.3(4).

#### **V. UST Fund Board**

The UST Fund is administered by the UST Fund Board. The UST Fund Board consists of the following six members:

- 1) the director of Iowa's department of natural resources (DNR) or the director's designee;
- 2) the treasurer of the State of Iowa or the treasurer's designee;
- 3) Iowa's commissioner of insurance or the commissioner's designee;
- 4) two public members appointed by the governor; and
- 5) the director of Iowa's legislative fiscal bureau or the director's designee.

Code of Iowa § 455G.4(1).

All of the members of the UST Fund Board are voting members, except the director of the legislative fiscal bureau,.

Code of Iowa § 455G.4(1)(e).

The two public members must have experience, knowledge, and expertise of the subject matter encompassed by Iowa Code chapter 455G. Code of Iowa § 455G.4(d). Further, these two public members must have experience in either, or both, financial markets and insurance. Code of Iowa § 455G.4(1)(d). Finally, the two public members can not have a "conflict of interest". Code of Iowa § 455G.4(1). For these purposes, a conflict of interest is defined as:

an affiliation, within the twelve months before the members appointment, with the regulated tank community, or with a person or property or casualty insurer offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated community.

Code of Iowa § 455G.4(1).

## **VI. UST Fund Board Contracts**

### **A. Public Bidding**

After July 1, 1992, all contracts in which the UST Fund Board is a party must be awarded on a publicly bid, competitive basis, unless the Board or its designee determines it is not practical to use public bidding. Code of Iowa § 455G.4(4). If the Board or its designee determines it is not practical to use public bidding, the basis for that determination must be documented.

Code of Iowa § 455G.4(4).

## **B. Contract Approval**

The UST Fund Board must approve all contracts it enters into which exceed seventy-five thousand dollars. Code of Iowa § 455G.4(5)(a). Furthermore, at each UST Fund Board meeting, a list of the contracts the Board has entered into since the last Board meeting must be presented. Code of Iowa § 455G.4(5)(b). This list must be made available to the public and contain the following information for each contract: the parties to the contract, the amount of the contract, and the subject matter covered by the contract. Code of Iowa § 455G.4(5)(b).

Consistent with Iowa Code section 455G.4(5)(a), the Board established a policy that the UST Fund Administrator has the overall authority to make decisions, on behalf of the Board, involving less than seventy-five thousand dollars (\$75,000) regardless of whether a contract is being entered into. The effect of this policy is that the Administrator has the authority to enter into contracts involving less than seventy-five thousand dollars without prior Board approval.

## **C. Independent Contractors - UST Fund Administration**

Although the UST Fund Board is charged with the responsibility of administering the UST Fund Program (Program), from the outset, the legislation contemplated the Program would one day go out of business. Therefore, the Iowa Legislature created a program that would employ as few state employees as possible. Instead, the UST Fund Board was given the authority to contract with persons in the private sector to staff the Program. Code of Iowa § 455G.5.

More specifically, the Board is authorized to contract with a person to act as the day to day administrator of the Program. Code of Iowa § 455G.5. Unlike other UST Fund Board contracts, the Board is required to publicly bid contracts to retain an administrator for the UST Fund, regardless of the practicality of doing so. Code of Iowa § 455G.5.

Currently, Williams & Company Consulting, Inc. (Williams) is contracted with the Board to administer the UST Fund Program. Pat Rounds is the employee of Williams who is designated the UST Fund Administrator (Administrator).<sup>4</sup>

#### **VII. UST Fund Board - General and Specific Powers**

The UST Fund Board has all of the general powers reasonably necessary and convenient to carry out its purposes and duties. 1995 Iowa Code Supp. § 455G.6. Specifically the Board has power to do the following:

---

<sup>4</sup> Williams has offices at P.O. Box 9401 Sioux City, Iowa 51102-9401 (phone numbers 800-942-1000 and 800-765-4041) and 1000 Illinois Street, Suite B, Des Moines, Iowa 50314 (phone 515-284-1616). Pat Rounds works out of Williams' Des Moines office.

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board may take any action which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.
2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used.
3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more improvements under the terms it determines.
4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including revenues derived from the use tax under section 423.24, subsection 1, paragraph "a", subparagraph (1) and deposited in the fund or an account of the fund.
5. Provide that the interest on bonds may vary in accordance with a base or formula.
6. Contract for the acquisition, construction, or both of one or more improvements or parts of one or more improvements and for the leasing, subleasing, sale, or other disposition of one or more improvements in a manner it determines.

1995 Iowa Code Supp. §§ 455G.6(1)-(6).

In addition, the Board has various general and specific powers relating to bonding. 1995 Iowa Code Supp. §§ 455G.6(7)-(14). The Board has used these powers to contract with the Iowa Finance Authority on three separate bond issues to provide financing for UST Fund Program activities. Iowa Code section 455G.7 sets forth various requirements applying to these bond offerings, such as those related to security for the bonds and capital reserve requirements.

Finally, the Board has the following extremely broad powers when it comes to the use of UST Fund monies:

Subject to the terms of any bond documents, moneys in the fund or fund accounts may be expended for administration expenses, civil penalties, moneys paid under an agreement, stipulation, or settlement, for the costs associated with sites within a community remediation project, for costs related to contracts entered

into with a state agency or university, costs for activities relating to litigation, or for the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter. For purposes of this chapter, administration expenses include expenses incurred by the underground storage tank section of the department of natural resources in relation to tanks regulated under this chapter.

1995 Iowa Code Supp. § 455G.6(15)(a).

The authority granted under this subsection which allows the Board to expend fund moneys on an activity the Board determines is necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations is especially broad and is known as the UST Fund Board's "umbrella authority". In part, because of the broad nature of the umbrella authority, the law imposes obligations on the Board which are unique to the umbrella authority. Prior Board approval is necessary before monies can be spent pursuant to the umbrella authority. 1995 Iowa Code Supp. § 455G.6(15)(b)(1). Furthermore, the Board's use of the umbrella authority is conditioned as follows:

If the expenditure of fund moneys pursuant to this authority would result in the board establishing a policy which would substantially affect the operation of the program, rules shall be adopted pursuant to chapter 17A prior to the board or the administrator taking any action pursuant to this proposed policy.

1995 Iowa Code Supp. § 455G.6(15)(b)(2).

The UST Fund Board is required to cooperate with the DNR in the implementation and administration of Iowa Code chapter 455G to assure that the state is, and will continue to be, recognized by the federal government as having an "approved state account" under the federal Resource Conservation and Recovery Act. 1995 Iowa Code Supp. § 455G.6(16).

Whenever possible, Iowa Code chapter 455G is to be interpreted to further the purposes of, and to comply with the federal

requirements. 1995 Iowa Code Supp. § 455G.6(16).

### **VIII. Revenue Sources for the UST Fund**

There are various, alternative revenue sources for the UST Fund. Each of these revenue sources may be impacted by the terms and conditions of the bond documents and associated security agreements. 1995 Iowa Code Supp. § 455G.8.

#### **A. Bonds**

As previously noted, the UST Fund Board has the authority to work with the Iowa Finance Authority to issue bonds secured by various of the UST Fund's revenue sources. 1995 Iowa Code Supp. § 455G.8(1). To date, there have been three separate bond issues in the total cumulative face amount of one hundred fourteen million one hundred twenty-seven thousand seven hundred dollars (\$114,127,700).

#### **B. Use Tax**

Iowa's Department of Revenue and Finance administers Iowa's motor vehicle use tax under the authority of Iowa Code chapter 423. Twenty-five per cent of use tax revenues, up to a maximum of seventeen million dollars (\$17,000,000) per year are deposited in the UST Fund and can be used for no other purpose. 1995 Iowa Code Supp. § 423.24(1)(a)(1). In addition, from January 1, 1996 through December 31, 1997, the UST Fund receives an additional ten million dollars (\$10,000,000) per year in use tax revenues deposited in the UST Fund marketability fund created by Iowa Code section 455G.21. 1995 Iowa Code Supp. § 423.24(1)(a)(2). Finally, beginning January 1, 1998 through December 31, 2002, the UST Fund receives an additional seventeen million dollars (\$17,000,000) per year in use tax proceeds which is also deposited in the UST Fund marketability fund. 1995 Iowa Code Supp. § 423.24(1)(a)(2). Once the use tax monies are deposited in the

UST Fund, they can be used only for UST Fund Program purposes. 1995 Iowa Code Supp. § 423.(1)(a).

### **C. Storage Tank Management Fees**

Owners and operators of USTs in Iowa are required to pay an annual storage tank management fee of sixty-five dollars (\$65.00) for each UST over one thousand one hundred gallons. Code of Iowa § 455B.479. Seventy-seven per cent (77%) of these annual fees are deposited in the UST Fund. Code of Iowa §§ 455B.479, 455G.8(3).

### **D. Insurance Premiums**

The premiums for UST Fund insurance programs under Iowa Code section 455G.11 are deposited in the insurance account of the UST Fund. 1995 Iowa Code Supp. § 455G.8(4).

### **E. Cost Recovery Enforcement**

The net proceeds of cost recovery pursuant to Iowa Code section 455G.13 are deposited in the innocent landowners fund created by Iowa Code section 455G.21. 1995 Iowa Code Supp. §§ 455G.21(2)(a), 455G.8(5). When federal cleanup funds are recovered through cost recovery, the proceeds are deposited in the remedial account of the UST Fund. 1995 Iowa Code Supp. § 455G.8(5).

### **F. Other Sources**

UST Fund Program revenues from other sources, such as interest on UST Fund monies and grants and proceeds from judgments, are also required to be deposited in the UST Fund. 1995 Iowa Code Supp. § 455G.8(6).

## **IX. Remedial Program**

### **A. Overview**

The UST Fund remedial program is a grant program which provides financial assistance from the UST Fund's remedial account to eligible owners and operators of petroleum USTs to assist them in paying for the costs of corrective action to investigate, monitor, and cleanup past petroleum contamination from their USTs. 1995 Iowa Code Supp. § 455G.9. The remedial program also assists owners and operators with the costs to upgrade their UST systems. 1995 Iowa Code Supp. § 455G.9(1)(a)(5). Owners and operators making a claim for remedial program benefits must fit within one of the several categories of claimants and meet the various eligibility requirements pertaining to that category. The categories of claimants are generally based on the nature of the claimant and the dates during which the claimant performed certain functions, such as reporting a release to DNR or filing a remedial program claim with the UST Fund Administrator. 1995 Iowa Code Supp. § 455G.9(1).

#### **B. Remedial Program Funding - Trust Fund**

The remedial program is funded through the remedial account. 1995 Iowa Code Supp. § 455G.9(2). In turn, the remedial account is funded through the motor vehicle use tax imposed pursuant to Iowa Code chapter 423 and any other monies and revenues the Board budgets for this purpose. 1995 Iowa Code Supp. § 455G.9(2).

#### **C. Categories of Remedial Program Claimants and Eligibility Requirements**

##### **1. Retroactive Claims**

Retroactive claims are remedial program claims made by owners and operators of USTs who reported releases to DNR on or after January 1, 1984, but prior to May 5, 1989. 1995 Iowa Code Supp. §§ 455G.9(1)(a)(1)&(3), 591 IAC § 11.1(3)(d).

Retroactive claims are further broken down between those claimants who reported releases to DNR after January 1, 1984, but

prior to July 1, 1987 and those claimants who reported releases to DNR after July 1, 1987, but prior to May 5, 1989. 1995

Iowa Code Supp. §§ 455G.9(1)(a)(1)&(3), 591 IAC § 11.1(3)(d).

**a. Releases Reported to DNR: 1/1/84 - 7/1/87**

Claimants filing retroactive claims for releases reported to DNR on or after January 1, 1984, but prior to July 1, 1987 are eligible for remedial program benefits if the claimant satisfies all of the following conditions:

Claimant is currently engaged in the business for which the tank connected with the release was used prior to the release report. 1995 Iowa Code Supp. § 455G.9(1)(a)(3)(a); and

Claimant has not and is not using self-insurance as its method of maintaining proof of financial responsibility for compliance with federal financial responsibility regulations. 1995 Iowa Code Supp. § 455G.9(1)(a)(3)(b).<sup>5</sup>

Claimant has not claimed bankruptcy at any time after January 1, 1985. 1995 Iowa Code Supp. § 455G.9(1)(a)(3)(c), 591 IAC § 11.1(3)(d)(7).

Claimant's claim was filed with the Board prior to September 1, 1990. 1995 Iowa Code Supp. § 455G.9(1)(a)(3)(d).

The owner or operator of the UST at the time the release was reported to DNR must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit or any combination. 1995 Iowa Code Supp. § 455G.9(1)(a)(3)(e).

Eligible claimants who are small businesses will get remedial benefits of up to one million dollars for the costs of

---

<sup>5</sup> Owners and operators who use a financial responsibility mechanism in which the ultimate financial responsibility for corrective action costs is not shifted from the owner or operator are self-insured for purposes of retroactive claims. 591 IAC § 11.1(3)(d)(5).

corrective action, subject to the copayment and deductible requirements of Iowa Code section 455G.9(4). 1995 Iowa Code

Supp. § 455G.9(1)(a)(3), 591 IAC

§ 11.1(3)(d)(6). Eligible claimants who are not small businesses receive the lesser of fifty thousand dollars (\$50,000) or their actual total corrective action costs, both subject to the copayment and deductible requirements of Iowa Code section 455G.9(4).

1995 Iowa Code Supp.

§ 455G.9(1)(a)(3), 591 IAC § 11.1(3)(d)(6). Third-party liability is specifically excluded from remedial program coverage for claimants in this category. 1995 Iowa Code Supp.

§ 455G.9(1)(a)(3).

**b. Releases Reported to DNR - 7/1/87 - 5/5/89**

Claimants filing retroactive claims for releases reported to DNR after July 1, 1987, but prior to May 5, 1989 (the effective date of Iowa Code chapter 455G) are eligible for remedial program benefits if the claimant satisfies all of the following conditions:

Claimant has not and is not using self-insurance as its method of maintaining proof of financial responsibility for compliance with federal financial responsibility regulations. 1995 Iowa Code Supp. § 455G.9(1)(a)(1)(a).<sup>6</sup>

Claimant has not claimed bankruptcy at any time on or after July 1, 1987. 1995 Iowa Code Supp. § 455G.9(1)(a)(1)(b), 591 IAC § 11.1(3)(d)(7).

Claimant's claim was filed with the Board prior to January 31, 1990, except claimants which are cities or

---

<sup>6</sup> Owners and operators who use a financial responsibility mechanism in which the ultimate financial responsibility for corrective action costs is not shifted from the owner or operator are self-insured for purposes of retroactive claims. 591 IAC § 11.1(3)(d)(5).

counties had until September 1, 1990 to file their claims. 1995 Iowa Code Supp. § 455G.9(1)(a)(1)(c).

The owner or operator of the UST at the time the release was reported to DNR must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit or any combination. 1995 Iowa Code Supp. § 455G.9(1)(a)(1)(d).

Eligible claimants who are small businesses will get remedial program benefits of up to one million dollars for the costs of corrective action, subject to the copayment and deductible requirements of Iowa Code section 455G.9(4). 1995 Iowa Code Supp. § 455G.9(a)(1), 591 IAC § 11.1(3)(d)(6). Eligible claimants who are not small businesses receive the lesser of fifty thousand dollars (\$50,000) or their actual total corrective action costs, both subject to the copayment and deductible requirements of Iowa Code section 455G.9(4). 1995 Iowa Code Supp. § 455G.9(1)(a)(1), 591 IAC § 11.1(3)(d)(6).

Third-party liability is specifically excluded from remedial program coverage for claimants in this category. 1995 Iowa Code Supp. § 455G.9(1)(a)(1).

## **2. Remedial Claims**

Remedial claims are made by owners and operators of USTs who reported releases to DNR after May 5, 1989, but on or before October 26, 1990. 1995 Iowa Code Supp. § 455G.9(1)(a)(2), 591 IAC § 11.1(3)(e). Claimants had to file a remedial claim with the Board prior to February 26, 1994. 591 IAC § 11.1(3)(e). Eligible claimants are eligible for remedial program benefits of up to one million dollars for the costs of

corrective action, subject to the copayment and deductible requirements of Iowa Code section 455G.9(4). 1995 Iowa Code Supp. § 455G.9(1)(a)(2), 591 IAC § 11.1(3)(e)(5). Third-party liability is specifically excluded from coverage on remedial claims. 1995 Iowa Code Supp. § 455G.9(1)(a)(2).

The Board pays remedial program claims on only the corrective action that is required by DNR. 591 IAC § 11.1(3)(e)(4). In addition the Board pays remedial program claims only if the Board or the Administrator has approved the expenses before the commencement of the corrective action. 591 IAC § 11.1(3)(g). To be eligible for remedial claim benefits, corrective action costs must be reasonable and necessary to complete the corrective action required by DNR. 591 IAC § 11.1(3)(e)(4).

### **3. Financial Hardship Claims**

Remedial program benefits are available to owners and operators who have a net worth equal to or less than fifteen thousand dollars (\$15,000) under the following circumstances:

There is no responsible party able to pay for the corrective action; and

There are no federal UST trust funds or other federal money available for the site; and

A release was discovered on or after January 24, 1989.

1995 Iowa Code Supp. § 455G.9(1)(b).

Eligible hardship claimants receive one hundred per cent remedial program benefits for both corrective action and third-party liability, not to exceed one million dollars. 1995 Iowa Code Supp. § 455G.9(1)(b), 591 IAC § 11.1(3)(n). The ability to pay (net worth) is determined after a claim has been filed. 1995 Iowa Code Supp. § 455G.9(1)(b).

A financial hardship claimant must meet the following conditions of eligibility:

Claim must have been submitted on or before February 26, 1994; and

Claimant must be a small business as defined by Iowa Code section 455G.2(18) (1995) and submit a self-certification form to that effect; and

Claimant's net worth must be fifteen thousand dollars (\$15,000) or less and submit the necessary documentation to that effect; and

The release for which the claim is made must have been discovered after January 24, 1989; and

The release for which the claim is made must have been reported to DNR by October 26, 1990; and

The site for which the claim was submitted must be in compliance with DNR's technical requirements; and

The site shall not be deeded or quitclaimed to the state in lieu of cleanup; and

Property taxes for the site shall not be delinquent; and

No responsible party able to pay for corrective action can be found; and

There are no federal UST fund or other federal monies available to provide coverage for the site; and

The work and the budget for the work must be approved by the Board or the Administrator.

1995 Iowa Code Supp. § 455G.9(1)(b), 591 IAC § 11.1(3)(n).

#### **4. Financial Institutions**

The Board has the authority to allow financial institutions to be eligible for remedial program benefits. 1995 Iowa

Code Supp. §§ 455G.9(1)(c), 455G.16. However, to date these provisions have never been implemented.

#### **5. Counties - Delinquent Property Taxes**

Counties which take title to property because of delinquent property taxes are eligible for remedial program benefits for that property to cover one hundred per cent of the costs of corrective action and third-party liability.<sup>7</sup> 1995 Iowa Code Supp. § 455G.9(1)(d). The statute requires counties to have acquired the property for delinquent property taxes pursuant to Iowa Code chapters 445 through 448. 1995 Iowa Code Supp. § 455G.9(1)(d). However, to expedite needed corrective action and to assist counties, the Board has approved agreements with counties to provide remedial program benefits for property counties acquired for delinquent property taxes even if the counties did not acquire the property pursuant to Iowa Code chapter 445 through 448.

The fact that a county is not a responsible party for a release related to a property acquired for delinquent property taxes results in counties being more willing to acquire petroleum contaminated properties for delinquent property taxes. 1995 Iowa Code Supp. § 455G.9(1)(d).

## **6. State Owned and Operated USTs**

State agencies and departments which own or operate USTs have the opportunity to become eligible for remedial program benefits to pay for corrective action addressing releases reported to DNR after May 5, 1989, but on or before October 26, 1990. 1995 Iowa Code Supp. § 455G.9(1)(e) (1995).<sup>8</sup>

---

<sup>7</sup> Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution. 1995 Iowa Code Supp. § 455G.9(1)(d) (1995).

<sup>8</sup> Remedial benefits for state agencies and departments are limited to those state agencies and departments which do

A state agency or department may, with the approval of the Board, opt into the remedial program. 1995 Iowa Code  
Supp. § 455G.9(1)(e). A condition of opting into the remedial program is that the state agency or department must pay all  
registration fees, storage tank management fees, environmental protection charges, and all other charge and fees on all USTs  
owned by the agency or department as if the agency or department were a person required to maintain proof of financial  
responsibility. 1995 Iowa Supp.

---

not receive a standing, unlimited appropriation which may be used for the costs of corrective action. 1995 Iowa Code Supp. §  
455G.9(1)(e).

§ 455G.9(1)(e). Furthermore, once a state agency or department opts in to the remedial program, it cannot opt out. 1995 Iowa Code Supp. § 455G.9(1)(e).

State agencies and departments opting into the remedial program are subject to the same copayment and deductible obligations under Iowa Code section 455G.9(4) as a remedial program eligible claimant who is required to maintain proof of financial responsibility. 1995 Iowa Code Supp. § 455G.9(1)(e).

#### **7. Property - Inheritance, Bequest, or Devise**

Persons who acquire property by inheritance, bequest of devise may be eligible for remedial program benefits.

1995 Iowa Code Supp. § 455G.9(1)(g).

In order to be eligible for remedial program benefits for a property a claimant acquires by inheritance, bequest or devise, the claimant must meet the following eligibility conditions:

The property must have been acquired by inheritance, bequest, or devise; and

The property has not been used to store or dispense petroleum since December 31, 1975; and

The claimant was not the owner of the property during the period of time when the release occurred; and

The release was reported to the Board by October 26, 1991.

1995 Iowa Code Supp. § 455G.9(1)(g). A claimant must establish compliance with these requirements through the use of supporting documentation which may include a personal affidavit. 1995 Iowa Code Supp. § 455G.9(1)(g).

Claimants eligible for remedial program benefits under this section receive benefits for corrective action costs subject to the copayment and deductible requirements of Iowa Code section 455G.9(4). 1995 Iowa Code Supp. § 455G.9(1)(g).

## 8. Governmental Subdivisions

Governmental subdivisions are eligible for remedial program benefits for one hundred per cent (100%) of their corrective action costs under the following conditions:

The UST was in place on the date the release was discovered or reported; and

The governmental subdivision did not own or operate the UST; and

The governmental subdivision did not obtain the property on which the UST is located on or after May 3, 1991.<sup>9</sup>

1995 Iowa Code Supp. § 455G.9(1)(h) (1995).

## 9. No Further Action Sites

Some sites for which DNR issued a no further action letter may be eligible for remedial program benefits. In order to be eligible for benefits, the following conditions must be met:

There was a release which was tested for prior to October 26, 1990; and

At a site for which DNR issued a no further action letter; and

Later a determination was made, due to the sale of the property or removal of a nonoperating UST, that remediation was required at the site which was reported to the Administrator by October 26, 1992; and

The claimant did not operate an UST on the site during the period of time the claimant owned the site; and

---

<sup>9</sup> Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this section whether or not the property was acquired on or after May 3, 1991.

The claimant is not a financial institution.

1995 Iowa Code Supp. § 455G.9(1)(i).

Claimants eligible under this section receive remedial benefits for corrective action costs, subject to the copayment and deductible requirements of Iowa Code section 455G.9(4). 1995 Iowa Code Supp. § 455G.9(1)(i).

#### **D. Nature and Limitations On Remedial Program Benefits**

##### **1. General**

Most eligible remedial program claimants receive remedial account benefits which only reimburse them for a portion of their costs of corrective action as defined by Iowa Code section 455G.2(6). 1995 Iowa Code Supp. §§ 455G.9(1)(a),(c),(e)-(i). However, hardship claimants and county claimants are also eligible for remedial account benefits to pay for third-party liability as that term is defined in Iowa Code section 455G.2(20). 1995 Iowa Code Supp. §§ 455G.9(1)(b)&(d).

##### **2. USTs Not Eligible for the Remedial Program**

The following USTs are not eligible for the UST Fund remedial program:

USTs taken out of use before January 1, 1974. Taken out of use means no petroleum has been deposited in the UST and no petroleum has been pumped out of the UST. 591 IAC § 11.1(3)(a)(1); and

USTs removed from the ground before July 1, 1985. 591 IAC § 11.1(3)(a)(2); and

USTs closed before July 1, 1985. 591 IAC § 11.1(3)(a)(3); and  
USTS which do not contain petroleum. 591 IAC § 11.1(3)(a)(4).

##### **3. Proof of Financial Responsibility Requirement**

To be eligible for the remedial program, a claimant must have demonstrated proof of financial responsibility using an acceptable method under 567 IAC chapter 136 no later than October 26, 1990. 591 IAC § 11.1(3)(b). If a remedial program claimant was able to demonstrate financial responsibility coverage by that deadline, but there is a lapse in that coverage at any time after October 26, 1990, the claimant will lose its remedial program eligibility. 591 IAC § 11.1(3)(b). However, this financial responsibility requirement does not apply to USTs which are temporarily closed consistent with 591 IAC section 11.1(3)(o). 591 IAC § 11.1(3)(b).

#### **4. Corrective Action Costs**

Corrective action costs reimbursed by the remedial program are the costs of action taken to minimize, eliminate, or cleanup a petroleum release. Code of Iowa § 455G.2(6). Corrective action costs specifically include costs for the following:

Excavation of an UST for purposes of repairing a leak or removal of the UST; and

Removing contaminated soil and cleaning groundwater and surface water.

Code of Iowa § 455G.2(6).

Corrective action costs specifically exclude costs for third-party liability and UST replacement or other capital improvements to an UST. Code of Iowa § 455G.2(6).

##### **a. UST Upgrades**

The costs of UST upgrades required by DNR are included in the costs of corrective action covered by the remedial program. 1995 Iowa Code Supp. § 455G.9(1)(a)(5). However, remedial program payments for upgrades are limited to ten thousand dollars (\$10,000). 1995 Iowa Code Supp. § 455G.9(1)(a)(5).

Sites which are determined by DNR to be "No Action Required" sites are not eligible for upgrade benefits. 591 IAC § 11.4(3).

Whether a given type of upgrade will qualify for remedial program benefits depends on whether the UST is on a contaminated site. 591 IAC §§ 11.4(5)-(6). If the UST is on a contaminated site, the nature of upgrade which is eligible for remedial benefits depends on whether the UST site is environmentally sensitive. 591 IAC §§ 11.4(5)-(6).<sup>10</sup>

**b. Monitoring Costs**

The costs of most DNR required monitoring are corrective action costs covered by the remedial program. 1995 Iowa Code Supp. § 455G.9(1)(a)(6). However, the costs of monitoring used only to meet DNR's leak detection requirements are not eligible for remedial program benefits. 1995 Iowa Code Supp. § 455G.9(1)(a)(6).

**c. SCR Costs**

---

<sup>10</sup> The various criteria applicable to remedial program benefits for UST upgrades are set forth in 591 IAC § 11.4.

The costs of preparing a Site Cleanup Report (SCR) are corrective action costs eligible for remedial program benefits. Code of Iowa § 455G.2(6), 1995 Iowa Code Supp. § 455G.9(1)(f). The remedial program pays one hundred per cent (100%) of the first twenty thousand dollars of SCR costs. 1995 Iowa Code Supp. § 455G.9(1)(f). SCR costs above twenty thousand dollars are considered corrective action costs subject to the deductible and copayment requirements applicable to the category of claimant owning or operating the UST. 1995 Iowa Code Supp. § 455G.9(1)(f).

#### **5. Maximum Remedial Program Benefits**

Remedial program benefits reimburse a claimant for actual costs incurred. Most eligible remedial claimants are eligible for up to one million dollars (\$1,000,000) in such reimbursements. 1995 Iowa Code Supp. § 455G.9(4)(b). However, retroactive claims of claimants who are not small businesses are limited to a maximum of fifty thousand dollars (50,000) in remedial program benefits. 1995 Iowa Code Supp. §§ 455G.9(1)(a)(1)&(3).

#### **6. Copayments and Deductibles**

##### **a. No Deductible or Copayment**

Hardship claims, county claims related to delinquent property taxes, and claims by governmental subdivisions have no copayment or deductible obligations. 1995 Iowa Code Supp. §§ 455G.9(1)(b),(d),(h).<sup>11</sup>

##### **b. Eighteen Per Cent Copayment**

---

<sup>11</sup> A county must pay a copayment/deductible if after acquiring the UST for delinquent property taxes, the county operates an UST on the property other than for purposes of risk management, risk assessment, or tank closure. 1995 Iowa Code Supp. § 455G.9(4)(b).

Claimants who have a net worth of one hundred thousand dollars or less and who own no more than one site have an eighteen per cent copayment obligation. 1995 Iowa Code Supp. § 455G.9(4)(a)(1). Net worth is considered to be the fair market value of the site receiving benefits. 1995 Iowa Code Supp. § 455G.9(4)(a)(1). For these purposes, net worth is calculated to include an adjustment for anticipated remedial benefits. 1995 Iowa Code Supp. § 455G.9(4)(a)(1).

### c. Standard Copayment/Deductible

The vast majority of remedial program eligible claimants have the standard copayment obligation. 1995 Iowa Code Supp. §§ 455G.9(1)(a),(c),(e)-(g). The standard copayment/deductible obligation is as follows:

For the first eighty thousand dollars (\$80,000) of corrective action costs, the claimant is obligated to pay the greater of five thousand dollars (\$5,000) or eighteen percent (18%) of the total costs of corrective action; and

If the total corrective action costs exceed eighty thousand dollars (\$80,000), the claimant is obligated to pay thirty-five per cent (35%) of corrective action costs above eighty thousand dollars in addition to the eighteen per cent copayment obligation applicable to the first eighty thousand dollars of corrective action costs.

1995 Iowa Code Supp. § 455G.9(4)(a)(2)-(3).

### 7. Recovery of Gain on Sale

If a claimant ceases to own or operate an UST within ten years of receiving remedial program benefits and sells or transfers the property, the claimant may be obligated to reimburse the remedial account for some of the benefits the claimant received. 1995 Iowa Code Supp. § 455G.9(5). However, such an obligation arises only when the price the claimant receives for the property is more than one hundred twenty per cent (120%) of the property's precorrective action value,

adjusted for equipment and capital improvements to the property.<sup>12</sup>

If the sale price exceeds the one hundred twenty per cent (120%) threshold, the claimant must do the following:

Notify the Board of the sale or transfer of the property; and

Refund to the remedial account ninety per cent (90%) of the amount the price of the property exceeds one

hundred twenty per cent (120%) of the property's precorrective action value up to a maximum of the

amount of remedial program benefits received by the claimant plus interest.

1995 Iowa Code Supp. § 455G.9(5).

This refund does not apply if the transfer is pursuant to the power of eminent domain or transfer. 1995 Iowa Code

Supp. § 455G.9(5).

## **8. Recurring Releases**

A release shall be treated as a recurring release reported on or after May 5, 1989, if the following occur:

A release was reported to DNR prior to May 5, 1989; and

Corrective action was taken pursuant to a DNR approved SCR; and

The work performed was accepted by DNR.<sup>13</sup>

---

<sup>12</sup> Precorrective action value is the assessed value of the property immediately before the discovery of a petroleum release at the property. Code of Iowa § 455G.2(16).

<sup>13</sup> Work performed is deemed accepted by DNR if DNR did not order further action within ninety (90) days of the date DNR had notice the work was completed, unless clearly indicated in writing to the claimant that additional work was needed

---

beyond that specified in the SCR or in addition to that work actually performed. 1995 Iowa Code Supp. § 455G.9(6).

1995 Iowa Code Supp. § 455G.9(6).

#### **9. DNR Required Corrective Action**

As previously noted, DNR is the regulator of USTs in Iowa. The remedial program pays only for corrective action the DNR requires. 1995 Iowa Code Supp. § 455G.9(7), Code of Iowa § 455G.12A(1). For example, if the DNR allows a site to be monitored only and does not require additional corrective action, the fund has no obligation to pay for any additional corrective action beyond the monitoring costs. 1995 Iowa Code Supp. § 455G.9(7).

#### **10. Owner or Operator for Remedial Program Purposes**

For purposes of the remedial program, the term owner includes not only the owner of the UST; it also includes the owner of the land for which a covered release was reported or a claim submitted within the applicable deadlines. 1995 Iowa Code Supp. § 455G.9(8). This definition means an owner of the land on which the UST is located may be eligible for remedial program benefits even if the landowner does not own the UST.

#### **11. Self-Insurers Upgrade Deadline**

To qualify for remedial program eligibility, a claimant who uses self-insurance pursuant to 567 IAC section 136.6 as its method of showing proof of financial responsibility must have upgraded its USTs as required by 40 C.F.R. § 280.21 by January 1, 1995. 1995 Iowa Code Supp. § 455G.9(9). Remedial program eligible self-insurers who fail to upgrade their USTs by this deadline will no longer receive remedial program benefits and must repay any remedial benefits received. 1995 Iowa Code Supp. § 455G.9(9).

#### **12. Impact of Insurance on Remedial Program Claims**

If claimants have insurance coverage to cover corrective action costs for their USTs after January 1, 1985, remedial program coverage is only available for such claimants under the following conditions:<sup>14</sup>

The remedial account will pay the deductible applicable to the claimant's insurance, subject to the applicable remedial program deductible/copayment obligation. 591 IAC § 11.1(3)(c)(1).

Except for the remedial program's payment of the deductible applicable to claimant's insurance, remedial program benefits are secondary to claimant's insurance. 591 IAC § 11.1(3)(c)(2).

Remedial program benefits can not be used to reimburse insurance companies for corrective action costs the insurance companies pay under the terms of their insurance contracts. 591 IAC § 11.1(3)(c)(3).

If there is a dispute between either the claimant and its insurance company or the UST Fund and the claimant's insurance company, claimants who are otherwise eligible for remedial program benefits will receive those remedial program benefits upon assigning their right to the insurance to the Board. 591 IAC § 11.1(3)(c)(4).

### **13. Cost Control and Budget Approval**

No corrective action costs will be reimbursed by the remedial program unless those costs are reasonable, necessary, and approved by the Board. Code of Iowa § 455G.12A(1), 591 IAC § 11.1(3)(g). No corrective action costs will be paid by the remedial program unless the budget for those costs was approved by the Board or the Administrator before the work is begun. Code of Iowa § 455G.12A(4), 591 IAC § 11.1(3)(g).

---

<sup>14</sup> Insurance coverage is coverage other than pursuant to Iowa Code section 455G.11 or other than pursuant to 40 C.F.R. §§ 280.95, 280.96, 280.99, 280.101-.103.

#### **14. Excess Funds - Trust Fund**

When the remedial account contains enough money to provide a dependable income to fund the costs for expected future releases or expected future losses for which there is no available responsible owner, the Board shall place the excess monies in a separate trust fund administered by the Board to be used only for that purpose. 1995 Iowa Code Supp.

§ 455G.9(3). To date, there has never been an excess which would allow the establishment of such a trust fund.

#### **15. Environmental Damage Offset**

Prior to 1995, there was an environmental damage offset against remedial program benefits in certain situations.

Code of Iowa § 455G.19. In 1995, the Iowa Legislature repealed the environmental damage offset. 1995 Iowa Code Supp.

§ 455G.19.

### **X. Marketability Fund and Innocent Landowners Fund**

#### **A. Background**

By 1995, it appeared there was not enough money available to fund all eligible remedial program claims. In addition, by 1995, it was clear there were a number of owners of petroleum contaminated property who were not eligible for remedial program benefits.

In an effort to address these situations, in 1995 the Iowa Legislature created the marketability fund and the associated innocent landowners fund. 1995 Iowa Code Supp. § 455G.21.

#### **B. Marketability Fund**

### 1. Creation

The marketability fund was created as a separate fund under the control and administration of the UST Fund Board.

1995 Iowa Code § 455G.21(1). Any money remaining in the marketability fund after each fiscal year remains in the marketability fund. 1995 Iowa Code § 455G.21(1). The creation of the marketability fund and the provisions of Iowa Code section 455G.21 does not automatically create a legal right for an owner of petroleum contaminated property to the receive benefits. 1995 Iowa Code Supp. § 455G.21(2)(a).

### 2. Funding

The 1995 UST legislation provides that from January 1, 1996 through December 31, 1997, the UST Fund will receive ten million dollars (\$10,000,000) per year in motor vehicle use tax revenues to be deposited in the UST Fund marketability fund. 1995 Iowa Code Supp. § 423.24(1)(a)(2). For the five years beginning on January 1, 1998 and ending on December 31, 2002 the amount of use tax proceeds deposited in the marketability fund will be increased to seventeen million dollars (\$17,000,000) per year. 1995 Iowa Code Supp. §§ 423.24(1)(a)(2).

Any interest earned on money in the marketability fund remains in the fund along with any other income specifically earmarked for the marketability fund. 1995 Iowa Code Supp. § 455G.21(1)(b).

### 3. Purpose

The marketability fund serves two purposes.

For the years 1996 through 2002, five million dollars (\$5,000,000) per year of marketability fund monies is to be

deposited in the innocent landowners fund. 1995 Iowa Code Supp. § 455G.21(2)(a). This money is intended to provide financial assistance to owners of petroleum contaminated property not eligible for remedial program benefits under Iowa Code section 455G.9. Iowa Code Supp. § 455G.21(2)(a).

The remaining monies in the marketability fund are to be used for remedial program benefits pursuant to the terms of Iowa Code section 455G.9. 1995 Iowa Code Supp. § 455G.21(2)(b). This money is intended to eliminate the shortfall in remedial program funding.

Unlike much of UST Fund Program monies, monies in the marketability fund can not be used for bonding purposes or for providing security for bonding under Iowa Code chapter 455G. 1995 Iowa Code Supp. § 455G.21(3).

### **C. Innocent Landowners Fund**

#### **1. Creation**

In 1995, the innocent landowners fund was created as a separate fund under the control and administration of the UST Fund Board. 1995 Iowa Code Supp. § 455G.21(2)(a). The creation of the innocent landowners fund and the provisions of Iowa Code section 455G.21 do not automatically create a legal right of an owner of petroleum contaminated property to the receipt of benefits. 1995 Iowa Code Supp. § 455G.21(2)(a).

#### **2. Funding**

As previously noted, for the years 1996 through 2002, five million dollars (\$5,000,000) per year is allocated from the marketability fund to the innocent landowners fund. 1995 Iowa Code Supp. § 455G.21(2)(a).

In addition, the innocent landowners fund receives the net proceeds from the cost recovery enforcement program

under Iowa Code section 455G.13. 1995 Iowa Code Supp. § 455G.21(2)(a).

### **3. Purpose**

Innocent landowners fund money is to be used to provide financial assistance for corrective action costs to some of the owners of petroleum contaminated properties not eligible for remedial program benefits under Iowa Code section 455G.9.

1995 Iowa Code Supp. § 455G.21(2)(a).

### **4. Eligibility Criteria**

#### **a. General**

The innocent landowners fund is structured so the statute provides skeletal eligibility requirements in a manner which requires additional eligibility requirements be added by the Board through rulemaking. 1995 Iowa Code Supp. § 455G.21(2)(a). The Board has promulgated innocent landowners fund rules setting these additional conditions and requirements. 591 IAC § 11.1(5).

#### **b. Statutory Eligibility Requirements**

The statutory eligibility criteria for innocent landowners benefits are as follows:

The claimant must be an owner of petroleum contaminated property; and

The claimant is not eligible for remedial program benefits under Iowa Code section 455G.9.

1995 Iowa Code Supp. § 455G.21(2)(a).

#### **c. Board Eligibility Requirements**

The Board may adopt rules which limit innocent landowners fund benefits to those petroleum contaminated

properties which present the greatest risk to public health and safety or the environment. 1995 Iowa Code Supp. §

455G.21(2)(a). The Board may also adopt rules which deny benefits to those claimants who did not make a good faith effort to comply with the provisions of Iowa Code chapter 455G. 1995 Code Supp. § 455G.21(2)(a).

The Board's rules on eligibility for innocent landowners fund reiterate the statutory eligibility requirements set forth above which apply to all innocent landowners fund claimants. 591 IAC § 11.1(5).

Subject to all of the eligibility criteria set forth above, the Board established the following classes of innocent landowners claims which may be eligible for innocent landowners fund benefits, set forth below in descending order of priority:

Late-filed Retroactive Claims;

Preregulation Claims;

Innocent Landowner Claims.

591 IAC § 11.1(5).

#### **(1) Late-filed Retroactive Claims**

As noted previously, claimants who reported releases to DNR on or after January 1, 1984, but before May 5, 1989, are considered to be retroactive claims. 591 IAC § 11.1(3)(d). There were statutory deadlines for filing retroactive claims.

1995 Iowa Code Supp.

§§ 455G.9(1)(a)(1)&(3).

Many retroactive claimants met all applicable eligibility criteria for retroactive claims, except they missed the claim filing deadlines. Such claimants are now eligible for innocent landowners fund benefits as late-filed retroactive claimants.

591 IAC § 11.1(5)(a). The eligibility criteria for late-filed retroactive innocent landowners claims are as follows:

The claimant met all eligibility criteria for retroactive claims under Iowa Code sections 455G.9(1)(a)(1) or 455G.9(1)(a)(3) except the claim filing deadline, which, among other things, means the claimant reported a release to DNR on or after January 1, 1984, but before May 5, 1989; and

A claim was filed with the Board by February 26, 1994; and

All costs incurred on or after July 10, 1996 were preapproved by the Board.

591 IAC § 11.1(5)(a).

## (2) Preregulation Claims

Preregulation claims are claims which were not eligible for remedial program benefits under Iowa Code section 455G.9(1)(a)(1)-(3) only because the UST involved was taken out of use prior to January 1, 1974 or permanently closed or removed before July 1, 1985. 591 IAC § 11.1(5)(b). Therefore, the eligibility criteria for preregulation innocent landowners fund claims is as follows:

All criteria for eligibility for remedial program benefits under Iowa Code subsections 455G.9(1)(a)(1) or (2) or (3) are met except the UST involved was taken out of use before January 1, 1974 or the UST was permanently closed or removed before July 1, 1985, which among other things means the claimant reported a release to DNR on or after January 1, 19984, but before October 26, 1990; and

USTs have not been operated on the site since the time the USTs were taken out of use or permanently closed; and

A claim is filed with the Board by December 1, 1996; and

All costs incurred after July 10, 1996, have been preapproved by the Board.

1995 Iowa Code Supp. § 455G.9(1)(a), 591 IAC § 11.1(5)(b).

### **(3) Innocent Landowner Claims**

UST releases which were not reported by owners of petroleum contaminated property as the term "owner" is defined for purposes of the remedial program, who did not comply with the various reporting or filing deadlines set forth in Iowa Code chapter 455G may be eligible for fund benefits as an innocent landowners fund claimant. 591 IAC § 11.1(5)(c). Within this class of claimants, priority is given to those owners who did not have knowledge of the USTs or who did not have control over the UST. 591 IAC § 11.1(5)(c). The following additional requirements apply to this class of claims:

Claims must be filed by December 1, 1996; and

The owner or operator must have reported the release to DNR consistent with DNR requirements; and

If the property was acquired on or after October 26, 1990, either:

The owner did not have knowledge of either the UST or a release impacting the property; or

If the owner did have knowledge of the UST or the release, the owner had to acquire the property to protect a security interest; and

All costs incurred after July 10, 1996, must be preapproved by the Board; and

The owner has not claimed bankruptcy on or after the date the release was reported.

591 IAC § 11.5(c)(1)-(4).

### **5. Additional Requirements and Innocent Landowners Benefits**

Innocent landowners fund benefits are limited to reimbursement for corrective action costs. 1995 Iowa Code Supp.

§ 455G.21(2)(a), 591 IAC § 11.1(5). In addition, such benefits are limited to the benefits the claimant would have received under Iowa Code section 455G.9(1)(a)(1)-(3) based on the date the claimant reported the release to DNR. 591 IAC § 11.1(5).

Finally, claimants must have complied with the requirements of 591 IAC section 11.1(3).

These requirements tying innocent landowners benefits to remedial program requirements have numerous consequences. Among those consequences are the following:

If the release was reported on or after January 1, 1984, but prior to May 5, 1989, the various provisions applying to retroactive claims under the remedial account apply. So, for instance, self-insurers are not eligible and eligible claimants who are not small businesses are limited to fifty thousand dollars in benefits; and

Claimants must have been the UST owner or operator at the time the release was reported; and

Claimants must comply with the financial responsibility requirements; and

Claimant must pay back unpaid insurance premiums; and  
USTs, such as heating oil tanks or non-petroleum USTs, which are excluded from remedial program benefits  
are also excluded from innocent landowners fund benefits.

1995 Iowa Code Supp. §§ 455G.9(1)(1)-(3), 455G.21, 591 IAC §§ 11.1(3)&(5).

All innocent landowner fund benefits are subject to the deductible and copayment obligations of Iowa Code section 455G.9(4). 591 IAC § 11.1(5). Finally, innocent landowners fund benefits are subject to available funding. 591 IAC § 11.1(5).

#### **XI. Loan Guarantee Program**

**A. Overview and Purposes**

One of the stated purposes of Iowa Code chapter 455G was to establish a loan guarantee account and an associated loan guarantee program. Code of Iowa § 455G.3(3)(b), Iowa Code Supp. § 455G.10(1). The loan guarantee program is another mechanism for providing owners and operators of USTs with financial assistance to comply with UST regulations.

The Board created the loan guarantee program to offer loan guarantees to eligible applicants on loans for the following specific purposes:

All or a part of applicants' corrective action costs. 1995 Iowa Code Supp. § 455G.10(1)(a), 591 IAC § 12.2(2)(a); and

Costs of UST and monitoring equipment improvements necessary to satisfy federal UST technical standards to become insurable 1995 Iowa Code Supp. § 455G.10(1)(b), 591 IAC § 12.2(2)(b); and

Costs of capital improvements made on an UST site. 1995 Iowa Code Supp. § 455G.10(1)(c), 591 IAC § 12.2(2)(c); and

Cost to purchase an UST site. 1995 Iowa Code Supp. § 455G.10(1)(d), 591 IAC § 12.2(2)(d).

**B. Funding**

Monies from the motor vehicle use tax may be used to fund the loan guarantee account. 1995 Iowa Code Supp. § 455G.10(1). In addition, the following are funding sources for the loan guarantee account:

Loan guarantee account income, including loan guarantee service fees, if any, and investment income attributed to the account by the Board. 1995 Iowa Code Supp. § 455G.10(7)(a); and

Other monies allocated to the account by the Board. 1995 Iowa Code Supp. § 455G.10(7)(b); and

Moneys appropriated by the federal government or general assembly and made available to the account.

1995 Iowa Code Supp. § 455G.10(7)(c).

Any funds remaining in the loan guarantee account at the end of a fiscal year remain in the account. 1995 Iowa Code Supp. § 455G.10(2). Further, all expenses incurred by the loan guarantee account are payable only from that account.

1995 Iowa Code Supp. § 455G.10(2).

A loan loss reserve account must be established within the loan guarantee account. 1995 Iowa Code Supp. § 455G.10(8). Defaults on loan guarantees are to be paid for from this loan loss reserve account. 1995 Iowa Code Supp. § 455G.10(8).

### **C. Terms and Conditions on Loan Guarantees**

Loan guarantees are made based on the terms and conditions set by the Board. 1995 Iowa Code Supp. §§ 455G.10(1)&(3). The various terms and conditions for loan guarantees set by the Board are found at 591 IAC chapter 12.

However, in addition to these rules setting terms and conditions, there are other terms and conditions imposed on loan guarantees by Iowa Code section 455G.10. Those terms and conditions include the following:

In no case may a loan guarantee satisfy more than ninety per cent (90%) of the outstanding balance on the loan. 1995 Iowa Code Supp. § 455G.10(1).

In calculating the net worth of an applicant for a loan guarantee, the Board must use the fair market value of the UST site and not the precorrective action value required for the recovery on gain of sale. 1995 Iowa Code Supp. §§ 455G.10(4), 455G.9(5).

An applicant must demonstrate satisfactory attempts to obtain financing from at least two financial institutions. 1995 Iowa Code Supp. § 455G.(10)(5).

The maturity for each loan guaranteed shall be the shortest feasible term consistent with the borrower's repayment ability. However, the term of the loan shall not exceed twenty years. If a loan term is longer than twenty years, the loan guarantee is ineffective beyond the term of the guarantee or twenty years, whichever is shorter. 1995 Iowa Code Supp. § 455G.10(6), 591 IAC § 12.1(2).

#### **D. Financial Institution Participation in the UST Fund**

The Board has the authority to impose conditions on the participation of financial institutions in the UST Fund.

Code of Iowa § 455G.16. In fact, certain conditions are imposed on financial institutions in the UST Fund Board rules for the guaranteed loan program. 591 IAC chapter 12.

These conditions imposed by the Board must be reasonably intended to increase the quantity of private capital available for loans to UST owners and operators who are small businesses. Code of Iowa § 455G.16.

In addition, the Board may provide financial incentives to financial institutions meeting Board imposed conditions.

Code of Iowa § 455G.16. Such incentives may include any of the following:

Extended UST Fund coverage of corrective action or third-party liability expenses; and

Waiver of copayment and deductible requirements; and

Other benefits not offered to other UST Fund participants.

Code of Iowa § 455G.16. However, such incentives can only be offered if they are reasonably intended to increase the amount of private capital available for UST owners and operators by more than the costs of the incentives. Code of Iowa §

455G.16.

## **XII. Insurance Program**

### **A. Overview**

When the Iowa Legislature created the UST Fund Program in 1989, the legislature recognized the only financial assurance mechanism available to many owners and operators was insurance. 1989 Iowa Acts, ch. 131, § 1. Furthermore, the legislature found private market insurance was not generally available for petroleum releases. 1989 Iowa Acts, ch. 131, §

1. Therefore, the Iowa legislature created:

A financial responsibility assurance mechanism to cover the costs of corrective action and third-party liability for prospective releases.

1989 Iowa Acts, ch. 131, § 2. This financial assurance mechanism is the UST Fund insurance program which is now codified at Iowa Code section 455G.11.

The UST Fund insurance program provides three different types of insurance:

Insurance for owners and operators which can be used to provide the financial assurance mechanism required under federal law. 1995 Iowa Code Supp. § 455G.11(1); and

Liability insurance for UST installers and inspectors. 1995 Iowa Code Supp. § 455G.11(6); and

Property transfer insurance. 1995 Iowa Code Supp. § 455G.11(10).

### **B. Funding**

The UST Fund insurance program is funded through the insurance account. 1995 Iowa Code Supp. § 455G.11(1).

The sources of funding for the insurance account are the following:

Monies allocated to the Board for insurance account purposes; and

Other monies allocated by the Board to the insurance account; and

Monies collected as insurance premiums; and

Investment income the Board attributes to the insurance account.

1995 Iowa Code Supp. § 455G.11(1)(a)&(b).

### **C. Owner/Operator Insurance**

#### **1. Coverage**

UST Fund owner/operator insurance is designed to allow owners and operators to use this insurance to maintain proof of financial responsibility as required under federal law. 1995 Iowa Code Supp. §§ 455G.11(1)-(2). The purpose of this insurance is to provide financial assistance to owner/operators for corrective action costs and third-party liability for future releases. 1995 Iowa Code Supp. § 455G.11(8).

#### **2. Coverage Limits**

Federal law requires owners and operators to have financial responsibility mechanisms that provide occurrence limits of one million dollars (\$1,000,000) for owner/operators of petroleum USTs at marketing facilities or that handle ten thousand gallons per month. 40 C.F.R. § 280.93(a)(1) (1994). All other owners and operators of petroleum USTs must have a financial responsibility mechanism with a five hundred thousand dollars (\$500,000) limit per occurrence. 40 C.F.R. §

280.93(a)(2) (1994).

Federal law requires owners and operators of petroleum USTs to have aggregate financial assurance limits of one million dollars (\$1,000,000) for owners and operators with one hundred or less USTs and two million dollars (\$2,000,000) for owners and operators with more than one hundred USTs. 40 C.F.R. § 280.93(b).

UST Fund insurance for owners and operators may be purchased in amounts up to these federally required limits, subject to the terms and conditions imposed by the Board and Iowa Code section 455G.11. 1995 Iowa Code Supp. § 455G.11(2).

### 3. Eligibility

Subject to other terms and conditions imposed by the Board, owners and operators can purchase insurance from the UST Fund to provide their required financial assurance mechanism if the owner or operator satisfies one of the following conditions:

Satisfies the federal new tank standards imposed by 40 C.F.R. § 280.20; or

On or before the date of application for insurance, satisfies the federal upgrade standards imposed by 40 C.F.R. § 280.21; or

Certifies in writing that the UST will be brought into compliance with either the new tank standards or the upgrade standards on or before December 22, 1998, provided the UST site tests release free prior to the issuance of insurance;<sup>15</sup> or

---

<sup>15</sup> Certain owners and operators failing to comply with the new tank standards or upgrade standards may be eligible for insurance, but are subject to a surcharge of eight hundred dollars (\$800) and double insurance premiums. 1995 Iowa Code Supp. § 455G.11(3)(c).

Is maintaining financial responsibility pursuant to current or previously applicable federal or state financial responsibility requirements.

1995 Iowa Code Supp. §§ 455G.11(3)(a)-(c)

The following are the applicable financial responsibility dates:

For a petroleum marketing firm with, at least, thirteen, but no more than ninety-nine USTs - on or before April 26, 1990; or

For an owner or operator not having thirteen to ninety-nine USTs and not currently or previously required to maintain financial responsibility - on or before October 26, 1990.

1995 Iowa Code Supp. § 455G.11(3).<sup>16</sup>

#### **4. Actuarially Sound Premiums**

---

<sup>16</sup> Additional Board imposed standards and eligibility conditions on owner/operator insurance are found at 591 IAC section 10.1.

In the early years of the owner/operator UST Fund insurance program, premiums were set by statute. 1995 Iowa Code Supp. § 455G.11(4). However, beginning on January 1, 1995, the Board is required to establish premiums on an actuarially sound basis.<sup>17</sup> 1995 Iowa Code Supp. § 455G.11(4)(g). In addition, the Board is required to annually adjust premiums so the premium reflects the risk to the insurance account.<sup>18</sup> 1995 Iowa Code Supp. § 455G.11(4)(g).

#### **5. Premium Discounts**

Persons in the wholesale or retail sale of petroleum can receive an eighteen per cent (18%) discount on their UST insurance premiums for all USTs at a site upon meeting all of the following conditions:

Maintains a tank for storing oil; and

Accepts waste oil from the general public; and

Posts a notice in the form and manner approved by the Administrator advertising the fact that the person will accept waste oil from the general public.

1995 Iowa Code Supp. § 455G.11(9).

#### **6. Deductibles**

The Board is allowed to offer a range of deductibles on owner/operator policies, but must offer a policy with a ten thousand dollar (\$10,000) deductible. 1995 Iowa Code Supp.

---

<sup>17</sup> Board rules on insurance premiums are set forth at 591 IAC § 10.3.

<sup>18</sup> Board rules related to insurance premium risk factors are set forth at 591 IAC § 10.4.

§ 455G.11(4)(h). Currently, the Board is offering a five thousand dollar deductible policy as well as a ten thousand dollar deductible policy.

## **7. Future Repeal**

Future repeal of the Board's authority to issue insurance will not affect the following:

Payment of claims filed before the repeal until monies in the insurance account are gone. Any claims remaining after the monies in the insurance account are gone are invalid.

The resolution of a cost recovery action filed prior to the effective date of the repeal.

1995 Iowa Code Supp. § 455G.11(5).

## **D. Installer and Inspector Insurance**

### **1. Coverage**

The Board is required to provide insurance to UST installers and inspectors of certified installation in Iowa for an environmental hazard which occurs in connection with certified UST installations. 1995 Iowa Code Supp. § 455G.11(6)(a).

Coverage is limited to corrective action and third-party liability for a certified UST installation in the state of Iowa. 1995 Iowa Code Supp. § 455G.11(6)(a).

### **2. Coverage Limits**

The Board offers installer and inspector insurance of up to one million dollars (\$1,000,000) per occurrence and up to two million dollars (\$2,000,000) aggregate. 1995 Iowa Code Supp. § 455G.11(6)(c).

### **3. Premiums**

In the early years of the insurance program, the Board offered installer and inspector insurance on a statutorily specified premium. 1995 Iowa Code Supp.

§§ 455G.11(6)(b)(1)-(4). Beginning on January 1, 1995 the Board is required to offer installer and inspector insurance on the basis of a premium that is actuarially sound. 1995 Iowa Code Supp. § 455G.11(6)(b)(5).

The premiums are fully earned and not subject to refund. 1995 Iowa Code Supp.  
§ 455G.11(6)(b)(5). Even if coverage is purchased for a portion of a year, the insured must pay the premium for the full year.  
1995 Iowa Code Supp. § 455G.11(6)(b)(5).

The Board may offer coverage at rates based on sales if the installer or inspector cannot be rated on a per tank basis, or if the work involves more than UST installation. 1995 Iowa Code Supp. § 455G.11(6)(b)(6).

#### **4. Deductible**

The Board may offer installer and inspector insurance with a range of deductibles, but must offer the insurance with a ten thousand dollar (\$10,000) deductible. 1995 Iowa Code Supp. § 455G.11(6)(d).

#### **5. Excess Coverage**

Excess coverage of up to five millions dollars (\$5,000,000) is available to installers and inspectors. 1995 Iowa Code Supp. § 455G.11(6)(e).

#### **6. Certification of UST Installations**

The Board is required to adopt certification rules requiring certification of UST installations as a precondition to offering insurance. The required Board rules on certification are found in the rules relating to installers and inspectors at 591

IAC chapter 15.

## 7. Coverage Alternatives

The Board must provide two alternative coverages to installers and inspectors. 1995 Iowa Code Supp. § 455G.11(7). One alternative is to provide coverage through the fund with the premiums and deductible set forth above. 1995 Iowa Code Supp. § 455G.11(7)(a). The other alternative is for the Board to cooperate with a private carrier in a manner which results in insurance with reasonable premiums. 1995 Iowa Code Supp. § 455G.11(7)(b).

### E. Property Transfer Insurance

#### 1. Coverage

The Board is required to offer an owner, operator, landowner, or financial institution insurance coverage to cover environmental damage caused by an UST if government action requires additional cleanup beyond what was required at the time the DNR issued either a monitoring certificate or a no further action certificate. 1995 Iowa Code Supp. § 455G.11(10)(a).

#### 2. Eligibility

Subject to the Board's underwriting requirements and other terms and conditions, persons may purchase property transfer insurance if all of the following conditions are met:<sup>19</sup>

A no further action or monitoring certificate has been issued for the site;<sup>20</sup> and

---

<sup>19</sup> Board imposed coverage provisions and underwriting requirement are set forth at 591 IAC section 10.5(1).

<sup>20</sup> Property transfer insurance on a monitored site is only effective for the period of time the monitoring is allowed

The UST location is not covered by any other environmental hazard insurance; and

The environmental damage is not caused by a new release; and

The additional cleanup is required by government action requiring cleanup beyond that required at the time

a no further action certificate or monitoring certificate was issued for the site.

---

pursuant to the terms of the monitoring certificate.

1995 Iowa Code Supp. § 455G.11(10)(b).

### 3. Premiums

As with other UST Fund insurance, in the early years of the installer/inspector insurance program, the amount of the premium was specified by law. 1995 Iowa Code Supp. § 455G.11(10)(c). However, beginning on January 1, 1995, the premium must be established on an actuarially sound basis. 1995 Iowa Code Supp. § 455G.11(10)(c).<sup>21</sup> The current minimum premium is two hundred fifty dollars (\$250) per site. 591 IAC § 10.5(3)(d).

### 4. Coverage Limits

Property transfer coverage is limited to five hundred thousand dollars (\$500,000). 1995 Iowa Code Supp. § 455G.11(10)(c), 591 IAC § 10.5(2).

### 5. Coverage Exclusions

Property transfer insurance has the following statutory exclusions:

Third-party liability; and

Cleanup beyond the actual costs associated with the site; and

Loss of use of the property and other economic damages; and

Cost associated with additional remediation cause by a voluntary change in the use of the site.<sup>22</sup>

---

<sup>21</sup> Board terms and conditions related to premiums are found at 591 IAC § 10.5(3).

<sup>22</sup> Additional, Board approved exclusions are set forth at 591 IAC section 10.5(4).

1995 Iowa Code Supp. § 455G.11(10)(d).

#### **6. Annual Monitoring Requirement**

Annual monitoring is required at any site covered by property transfer insurance. 1995 Iowa Code Supp. § 455G.11(10)(e).

#### **7. Transfer of Coverage**

Property transfer insurance may be transferred upon the payment of a fifty dollar (\$50) fee. 1995 Iowa Code Supp. § 455G.11(10)(f), 591 IAC § 10.5(3)(e).

#### **8. Deductible**

Property transfer insurance is subject to a ten thousand dollar (\$10,000) deductible. 591 IAC § 10.5(7).

#### **F. Third-party Liability**

To the extent any UST Fund insurance covers third-party liability, third-party liability does not include personal injury. 1995 Iowa Code §§ 455G.11(8), 455G.11(11).

### **XIII. Prioritization**

In 1995, the Board's specific authority to prioritize remedial program claims was repealed. 1995 Iowa Acts, ch. 215, § 17. However, the Board retains the authority to prioritize its loan guarantee program and its insurance program. Code of Iowa § 455G.12. The Board may prioritize these programs if it determines, within the realm of sound business judgement and practice, prioritization is necessary in light of the funds available for these programs. Code of Iowa § 455G.12.

The Board may promulgate rules to prioritize these programs based on adherence or planned adherence of the UST

owner and operator to higher than minimum environmental protection and safety compliance considerations. Code of Iowa

§ 455G.12. Before adopting any such prioritization rules the Board must consider the following issues:

The positive environmental impact of assistance prioritization; and

The economic feasibility, including the availability of private financing, for an owner or operator to obtain priority status; and

Any negative impact on Iowa's rural petroleum distribution network which could result from prioritization; and

Any similar prioritization systems in use by the private financing or insurance markets in this state, including terms, conditions, or exclusions; and

The intent of this chapter that the board shall maximize the availability of reasonably priced, financially sound insurance coverage or loan guarantee assistance.

Code of Iowa §§ 455G.12(1)-(5).

To date, the Board has not prioritized either its loan guarantee program or its insurance program.

#### **XIV. Cost Containment Authority**

##### **A. Overview**

Unlike many state UST Fund programs, the Iowa UST Fund has strong statutory cost control authority. In large part, because of the implementation of these statutory provisions, in 1996 the Iowa UST Fund Program received the first national award for cost savings by a state UST fund program.

## B. Contract Validity

If an owner or operator of a petroleum UST is a party to a contract for goods or services which may be payable or reimbursable by the Iowa UST Fund, the owner or operator is obligated to get the Administrator's approval of the contract.

### Code of Iowa

§ 455G.12A(1). Such a contract is invalid unless the Administrator does the following:

Approves the contract as being fair and equitable to the owner or operator; and

Finds the contract prices for the goods and services are within the range of usual and customary prices for similar or equivalent goods and services in Iowa; and

Finds that the goods and services are necessary for the owner or operator to comply with UST Fund or regulatory standards.

### Code of Iowa § 455G.12A(1).

An owner or operator may appoint the Administrator as its agent for negotiating contracts with suppliers of goods and services which are paid, in part, by the UST Fund. Code of Iowa § 455G.12A(1). Further, the Administrator may select a contractor other than the one selected by the owner or operator if the Administrator determines either of the following:

The proposed or actual work of the contractor selected by the owner or operator does not reflect the quality or workmanship required for the work; or

The costs of the proposed or actual work of the contractor selected by the owner or operator are excessive.

### Code of Iowa § 455G.12A(1).

**C. UST Fund Board Contracting Authority**

When reviewing contracts for goods and services which will be paid, in whole or part, by the UST Fund, the Administrator may require the owner or operator to obtain and submit three bids. Code of Iowa § 455G.12A(2). In addition, the Administrator may require specific terms and conditions in contracts which it reviews. Code of Iowa § 455G.12A(2). The Board has the authority to contract for SCRs which it pays for through its remedial program. Code of Iowa § 455G.12A(2).

However, the Board does not have the authority to affect a contract which has already been approved by the Administrator. Code of Iowa § 455G.12A(2).

**D. Exclusive Contracts**

The Administrator may enter into a contract or an exclusive contract with the supplier of goods or services required by a class of owners or operators if the goods or services are payable, in part, by the UST Fund. Code of Iowa § 455G.12A(3).

The Administrator has the authority to enter into such contracts on any or a combination of the following bases:

For a gross maximum price; or

For a fixed rate; or

On an exclusive basis; or

Subject to any other term or condition which is calculated to obtain the goods and services for owners and operator at a reasonable price.

Code of Iowa § 455G.12A(3). Such contracts may provide for direct payment from the UST Fund to the supplier. Code of

Iowa § 455G.12A(3).

Subject to Board approval, the Administrator may contract with an independent person to assist in the review of work for which Fund benefits are sought and to assist in establishing prevailing costs of goods and services paid for, in part, by the UST Fund. Code of Iowa § 455G.12A(3).

#### **E. Prior Budget Approval by the Administrator**

Unless an emergency condition exists, a contractor supplying goods or services paid for by the UST Fund must have the work approved by the Administrator before the contractor begins the work. Code of Iowa § 455G.12A(4). The UST Fund is not obligated to pay for any expense above the budget approved by the Administrator without specific approval by the Administrator. Code of Iowa § 455G.12A(4).

All invoices for work to be paid for by the UST Fund must be submitted as deemed necessary by the Board, but in any event, no later than thirty (30) days after the work has been finished. Code of Iowa § 455G.12A(4).

If a contractor does not get the Administrator's prior budget approval for the contractor's work, neither the UST Fund nor the owner or operator is responsible for payment for the work. Code of Iowa § 455G.12A(4).

### **XV. Cost Recovery**

#### **A. Overview**

The Iowa UST Fund Program has used its cost recovery authority in an unprecedented effort to recover the UST Fund and claimant corrective action costs from past owners, past operators, and other parties responsible for UST related petroleum

contamination. To date, the UST Fund Program has recovered over twenty million dollars from responsible parties, primarily major oil companies.

#### **B. Cost Recovery Authority**

The UST Fund Board has the authority to seek recovery of monies the Board has spent for corrective action and third-party liability from the owners, operators, and other responsible parties. Code of Iowa § 455G.13(1). This authority extends to the recovery of other costs the Board incurs related to the petroleum release and case prosecution, including attorneys fees and court costs. Code of Iowa § 455G.13(1).

If federal cleanup funds are recovered by the Board's cost recovery efforts,

those funds must be deposited in the remedial

account and used only for future petroleum UST

cleanups. Code of Iowa § 455G.13(1).

#### **C. Eligible Claimants - Limited Liability and Exceptions**

With certain exceptions set forth below, the Board may not seek cost recovery from a claimant who is eligible for remedial program benefits. Code of Iowa § 455G.13(2)(a). However, the DNR explicitly retains its right to collect civil and administrative fines, penalties, and fees. Code of Iowa § 455G.13(2)(a). In addition, the remedial account is not liable for third-party liability in cost recovery proceedings. Code of Iowa § 455G.13(2)(a).

The liability of a claimant for a release covered by UST Fund insurance is limited to the claimant's insurance deductible amount. Code of Iowa § 455G.13(2)(b).

There are several exceptions to the limited liability of remedial program eligible claimants. Remedial program claimants can be cost recovered against for unpaid deductibles and copayments. Code of Iowa § 455G.13(2)(a). In addition, a claimant is liable for the total costs of corrective action and bodily injury or property damage to third parties in the following situations:

Non-compliance with the DNR's financial responsibility requirements; or

Non-compliance with the DNR's other applicable UST rules; or

Non-compliance with applicable provisions of Iowa Code chapter 455G or Board rules.

Code of Iowa § 455G.13(3).

In the Board's cost recovery actions against responsible parties, the responsible parties cannot use the claimant's fault to reduce the Board's recovery. Hagen v. Texaco Refining & Marketing, 526 N.W.2d 531, 543 (Iowa 1995).

#### **D. Treble Damages**

Punitive damages can be recovered in the amount of three times the amount of money expended by the UST Fund in the following situations:

Failed to respond to a release from a petroleum UST upon, or in accordance with, the DNR director's notice;  
or

After May 5, 1989, failed to do any of the following:

Did not register an UST the owner or operator knew or should have known to exist; or

Intentionally failed to report a known release.

Code of Iowa §§ 455G.13(4)(a)-(b).<sup>23</sup>

The UST Fund cannot be liable for punitive damages. Code of Iowa § 455G.13(11).

#### **E. UST Site Liens**

If an owner or operator fails to pay the UST Fund any amount required under a statute, rule, contract or determination of liability by the Board or DNR, the Board is authorized to place a lien on the real property where the UST, which was the subject of corrective action, is located in the amount the owner or operator failed to pay. Code of Iowa § 455G.13(5). The liability related to the lien is to be collected in the same manner as the environmental protection charge. Code of Iowa § 455G.13(5).

#### **F. Joinder of Parties**

DNR has standing in any case or contested case proceeding related to the UST Fund or an UST. Code of Iowa § 455G.13(6). When DNR joins such a case or contested case proceeding, it may assert any claim it has regarding the UST at issue in the proceeding. Code of Iowa § 455G.13(6).

A party to a cost recovery or subrogation action may file a motion to join any potentially responsible party who may be liable for cost recovery costs and expenditures. Code of Iowa § 455G.13(6). Upon a sufficient showing, the court or administrative law judge must join the potentially responsible party. Code of Iowa § 455G.13(6).

---

<sup>23</sup> The state, counties, cities and other political subdivisions are not liable for punitive damages in cost recovery cases. Code of Iowa § 455G.13(4).

### **G. Standard of Liability**

The standard of liability in cost recovery proceedings is strict liability. Code of Iowa § 455G.13(7). Strict liability is liability without fault. Hagen at 537. Strict liability means liability that exists even without negligence or intent to harm. Id. However, in cost recovery actions against responsible parties, the Board must show the responsible parties' actions were a cause of the release. Id.

### **H. Effect of Third-party Contracts**

Any agreement seeking to shift the risk and transfer liability for cost recovery is not effective against the Board or DNR. Code of Iowa § 455G.13(8). Regardless of any such agreement, the UST Fund, the Board, and DNR may proceed directly against the owner, operator or other potentially responsible party. Code of Iowa § 455G.13(8).

Agreements to insure, hold harmless, or indemnify a party to the agreement for any cost or expenditures under Iowa Code chapter 455G are not barred and the rights of the parties to the agreement are not modified by the cost recovery statute, except to the extent the agreement seeks to shift liability to a remedial program eligible owner or operator for any damages or other expenses in connection with a corrective action for which another responsible party is or may be liable. Code of Iowa § 455G.13(8). Any provision seeking to shift such risk to a remedial program eligible owner or operator is null and void and of no force and effect. Code of Iowa § 455G.13(8).

### **I. Later Proceedings Permitted**

An entry of judgment against a party to a cost recovery action does not bar a future DNR or Board action against another person who is alleged to be liable for UST Fund costs and expenditures. Code of Iowa § 455G.13(9). Despite the

Iowa statute on contribution in comparative fault cases, no potentially responsible party can recover from a remedial program eligible claimant for damages or other expenses in connection with corrective action for which the potentially responsible party is or may be liable. Code of Iowa § 455G.13(9).

A subsequent, successful proceeding by the Board or DNR against another party does not reduce or modify the liability of a party against whom a judgement has already been entered. Code of Iowa § 455G.13(9).

#### **J. Relationship of Claimant and the Board in Cost Recovery Proceedings**

When the Board funds corrective action or third-party liability of a fund eligible claimant, the Board assumes the rights of the claimant to cost recover against potentially responsible parties to the extent of the expenditure by the Board. Code of Iowa § 455G.13(10).

In cost recovery actions the court must allow evidence and argument about the replacement or indemnification of actual past, present and future economic loss to the claimant by reason of insurance benefits, government benefits or programs and any other source. Code of Iowa § 455G.13(10).

A claimant may allow the Board to pursue the claimant's claim for injuries not compensated by the UST Fund as long as the attorney general determines there is no conflict of interest. Code of Iowa § 455G.13(10). In those cases where the Board pursues claimant's claims, litigation expenses shall be shared on a pro rata basis, but claimant's expenses are to be paid solely from claimant's share of any recovery, whether by judgment or settlement. Code of Iowa § 455G.13(10).

#### **K. Limited Right of Recovery Against Installers and Inspectors**

Neither the Board nor any person insured by the Board has any right of recovery or right of subrogation against any

UST Fund insured installer or inspector, except the recovery of any deductible paid by the Board or the insured person. Code of Iowa § 455G.13(12).

## **XVI. Installers and Inspectors - Education, Registration, Licensing and Insurance**

### **A. Overview**

The Board is responsible for adopting certification procedures and standards for UST installation inspectors. Code of Iowa § 455G.17(1). The Board is also responsible for adopting approved curriculum for training a person who wishes to be a certified as an UST installer. Code of Iowa § 455G.17(2). In addition, the Board is required to promulgate rules requiring registration of certified or authorized UST inspectors. Code of Iowa § 455G.17(4). The failure of a person to register as an UST inspector does not affect that person's certification or the certification of an otherwise eligible installation. Code of Iowa § 455G.17(4). However, the Board is authorized to establish a civil penalty of up to fifty dollars for failure of an inspector to register. Code of Iowa § 455G.17(4). The Board is authorized to provide a list of registered inspectors to any interested party. Code of Iowa § 455G.17(4). Finally, the Board may impose a fee for registration to recover the costs of administering this program. Code of Iowa § 455G.17(4).

The Board is responsible for adopting curricula for training persons to install USTs in a manner so the installation can be certified for purposes of the UST Fund's insurance program. Code of Iowa § 455G.17(3). The Board is authorized to provide fire safety and environmental protection guidelines for persons removing USTs. Code of Iowa § 455G.17(3). These various UST F

### **B. Rules Relating To Installer and Inspector Requirements**

## **1. Installers, Testers, Liners**

General licensing and fee requirements for installers, liners, and testers is set forth at 591 IAC section 15.3. Among other things, installers, liners, and testers must pay an annual license fee of thirty-five dollars (\$35) unless the individual is a sole proprietor doing business as a licensed company. 591 IAC § 15.3(1)(a).

Educational requirements for installers, liners, and testers are set forth at 591 IAC section 15.4. This rule provides the specifics for education and examination as well as exceptions to these requirements. This rule also provides for reciprocity in certain situations and continuing education requirements.

Environmental liability insurance requirements for installers, testers, and liners are set forth at 591 IAC section 15.5. All installers, testers, and liners are required to have, at least, two hundred fifty thousand dollars (\$250,000) of such insurance. 591 IAC § 15.5.

### **a. Installers**

Licensing requirements specifically applicable to installers are found at 591 IAC section 15.6(1). Specific installer responsibilities are set forth at 592 IAC section 15.6(2). Documentation requirements for installers' installation of new USTs or upgrading UST systems are found at 591 IAC section 15.6(3).

### **b. Testers**

In addition to the general licensing requirements of 591 IAC section 15.3, licensing procedures and requirements applicable only to testers are set forth at 591 IAC section 15.7(1). Criteria for approved testing systems are set forth at 591 IAC section 15.7(2). Finally, documentation requirements for testers are found at 591 IAC section 15.7(3).

**c. Liners**

Licensing requirements applying only to liners are found at 591 IAC section 15.8(1). Standards for approved testing systems are set forth at 591 IAC section 15.8(2). Documentation requirements for testers are the same as for installers. 591 IAC sections 15.6(3) and 15.8(3).

**2. Inspectors**

General licensing and fee requirements for inspectors are set forth at 591 IAC section 15.3. Licensing requirements applicable only to inspectors are found at 591 IAC section 15.9(1).

Educational requirements for inspectors are set forth at 591 IAC section 15.4. This rule provides the specifics for education and examination as well as exceptions to these requirements. This rule also provides for reciprocity in certain situations and continuing education requirements.

Environmental liability insurance requirements for inspectors are set forth at 591 IAC section 15.5. All inspectors are required to have, at least, two hundred fifty thousand dollars (\$250,000) of such insurance. 591 IAC § 15.5.

Inspector documentation requirements are found at 591 IAC section 15.(2). Compensation criteria for inspectors is set forth at 591 IAC section 15.9(3). Notification requirements related to inspectors are provided in 591 IAC section 15.10.

**3. General Procedures**

The Administrator is required to maintain a data base related to installers, inspectors, testers, and liners. 591 IAC § 15.12(1). Criteria applicable to license revocation is found at 591 IAC section 15.12(2). Appeal rights applicable to installers, inspectors, liners, and testers is set forth at 591 IAC section 15.12(3).

## **XVII. Groundwater Professional Certification Program**

### **A. Background**

Prior to 1995, there was a DNR groundwater professional registration program administered by the Administrator under a 28E agreement between DNR and the UST Fund Board. In 1995, the Iowa Legislature converted the groundwater professional registration program to a groundwater professional certification program. 1995 Iowa Acts, ch. 215, § 27. The groundwater professional certification program is also administered by the Administrator under a 28E agreement between DNR and the Board.

Under this law, DNR is required to adopt rules requiring certification of groundwater professionals. 1995 Iowa Code Supp. § 455G.18(1). These rules must address suspension or revocation of certification for good cause. 1995 Iowa Code Supp. § 455G.18(1). DNR has adopted such rules which are found at 567 IAC chapter 134.

### **B. Groundwater Professional Requirements**

#### **1. Groundwater Professional - Definition**

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

Certified by one or more of the following:

The American Institute of Hydrology as a professional hydrologist, professional hydrogeologist, or a professional hydrologist (groundwater); or

The National Water Well Association as a groundwater professional; or

Association of Groundwater Scientists and Engineers as a groundwater professional; or

The American Board of Industrial Hygiene as an industrial hygienist; or

A professional engineer registered in the state of Iowa; or

A professional geologist certified by a national association (e.g. American Institute of Professional Geologists, American Association of Petroleum Geologists, and Society of Independent Earth Scientists); or

A person with five years of direct and related training and experience as a groundwater professional or in the field of earth science as of June 10, 1991; or

A person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state or by a national organization, if the license, certification, or registration requires, at least, all of the following:

A bachelor's degree from an accredited college; and

Five years of related professional experience.

1995 Iowa Code Supp. § 455G.18(2), 567 IAC § 134.2(2).

## **2. General Certification Requirements**

A person must be certified in order to provide services in the state of Iowa as a groundwater professional. 567 IAC §

134.3(3). Anyone who fails to obtain certification with DNR is subject to a penalty of fifty dollars (\$50). 1995 Iowa Code

Supp. § 455G.18(3), 567 IAC § 134.5.

With limited exceptions, to be certified as a groundwater professional, an applicant must complete a course of instruction and pass an examination offered by or authorized by DNR. 1995 Iowa Code Supp. § 455G.18(5), 567 IAC §

134.2(3). The only exceptions to these education and examination requirements are the following:

Groundwater professionals registered prior to January 1, 1996, are not required to take a course of instruction, but must pass the examination by January 1, 1997. 1995 Iowa Code Supp. § 455G.18(6), 567 IAC § 134.3(3)(a); and

DNR may provide an exemption from the course of instruction and examination requirements for professional engineers registered under Iowa Code chapter 542 if the engineer is qualified in one or more of the following fields:

Geotechnical engineering; or  
Hydrological engineering; or

Environmental groundwater engineering; or

Hydrogeological engineering.

1995 Iowa Code § 455G.18(8), 567 IAC § 134.3(6).

Anyone who fails the initial examination may take a second examination after a sixty (60) day waiting period. 567

IAC § 134.2(3)(a). However, anyone registered as a groundwater professional before June 12, 1996 will be allowed to continue working as a groundwater professional for ninety (90) days in order to enable the person to take a second examination, if necessary. 567 IAC § 134.2(3)(b).

Failure of a second examination will cause the denial of certification. 567 IAC § 134.2(3)(b). While a person may reapply for certification, the applicant must complete an approved course of instruction before retaking the examination. 567 IAC § 134.2(3)(b).

### 3. Certification Procedures

**a. Applications**

Application for certification is to be made by submitting the DNR form for that purpose along with evidence of meeting the certification requirements. 567 IAC § 134.3(1). The initial application and each renewal application must be accompanied by a nonrefundable two hundred dollar (\$200) application fee, which is for a two year period, renewable biennially. 1995 Iowa Code Supp. § 455G.18(3), 567 IAC § 134.3(2).

**b. Deadlines**

Other application deadlines and the procedures related to certification issuance are set forth in the provisions of 567 IAC sections 134.3(3)-(4).

**c. Continuing Education**

All groundwater professionals are required to attend, at least, six (6) hours of continuing education per year. 1995 Iowa Code Supp. § 455G.18(7), 567 IAC § 134.3(5). However, groundwater professionals not required to take the initial examination because they were registered groundwater professionals by June 12, 1996, are required to take sixteen hours (16) of continuing education in their first year. 567 IAC § 134.3(5)(a).

**d. Suspension, Revocation, Denial of Certification**

A groundwater professional who knowingly or intentionally makes a false statement which results in mistaken classification of an UST site is guilty of a serious misdemeanor and will have its certification revoked. 567 IAC § 134.5. The other DNR rules on suspension, revocation, and denial of certification are found at 567 IAC section 134.4.

These rules set forth the following:

DNR general policy on suspension, revocation and denial of certification. 567 IAC § 134.4(1).

Various grounds for suspension, revocation, and denial, including discipline related to both single acts or omissions and repeated acts or omissions. 567 IAC §§ 134.4(2)-(4).

Disciplinary procedures. 567 IAC § 134.4(5).

### C. Miscellaneous

The law provides that certification of groundwater professionals shall not impose any liability on DNR or the UST Fund for any claim related to action or inaction of groundwater professionals certified by DNR. 1995 Iowa Code Supp. § 455G.18(4).

A list of certified groundwater professionals is maintained and will be provided to interested persons. 1995 Iowa Code Supp. § 455G.18(3).

Despite the groundwater certification requirements, SCRs and corrective action design reports (CADRs) will be accepted by DNR from registered groundwater professionals as long as they comply with the applicable DNR rules. 1995 Iowa Code Supp. § 455G.18(9).

### XVIII. Administrative Proceedings

The UST Fund Board is a state entity and, as such, is governed by the Iowa Administrative Procedures Act. Code of Iowa § 17A.1(2). Pursuant to the Iowa Administrative Procedures Act, the Board has promulgated a number of rules governing its conduct.

The UST Fund Board rules relating to the Board's procedures for rulemaking and petitions for rulemaking are found at

591 IAC chapter 4 and 591 IAC chapter 2, respectively. The Board's rules regarding declaratory rulings are set forth at 591 IAC chapter 3.

The Board's rules regarding appeals of agency action in contested cases are contained at 591 IAC chapter 17. Of particular note is the Board's requirement that any person appealing a decision of the Administrator who claims entitlement to a contested case hearing must file a written notice with the Administrator within thirty (30) days of the appellant's receipt of the decision being appealed. 591 IAC § 17.7.

#### **XIX. Community Remediation**

Community Remediation is defined as follows:

A program of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board.

Code of Iowa § 455G.2(5), 591 IAC § 13.1.

Community remediation is a concept under which the UST Fund Program selects a single contractor to do corrective action at two or more sites. Use of this concept allows for greater efficiency and lower costs of corrective action. However, use of the community remediation concept does not expand the scope of UST Fund coverage otherwise available or relieve liability otherwise imposed under state or federal law. Code of Iowa § 455G.2(5).

Iowa law encourages the use of community remediation. In fact, among the rules the Board is required to adopt are rules which facilitate and encourage community remediation whenever possible. Code of Iowa § 455G.4(3)(f). In response to this statutory directive, the Board has adopted rules on community remediation which are found at 591 IAC chapter 13.

The Board has used the concept of community remediation and packaged community remediation to administer forty-seven (47) separate packaged community remediation projects to do SCRs in over sixty-five (65) different communities in the state of Iowa. The Board contracted with one consultant in each of these forty-seven projects to do the SCR work for the UST sites in the project.

The Board's community remediation rules set forth general requirements for community remediation projects. 591 IAC § 13.2. The Board's rules set specific requirements relating to community remediation project contractors and set ground rules for contracts, change orders, and final costs on such projects. 591 IAC §§ 13.3, 13.4.

The Board's community remediation project rules also address the following issues:

Recovery of free product discovered during completion of an SCR in

community remediation or packaged community remediation projects. 591 IAC § 13.5; and

Completion of CADR in such projects. 591 IAC § 13.6; and

Payment for corrective action and the completion of CADR when commingled plumes exist. 591 IAC § 13.7; and

Selection of a consultant when the plume of contamination is attributable to both fund eligible and fund ineligible sites. 591 IAC § 13.8; and

The process for handling an owner/operator who does not want to participate in the corrective action phase of the project. 591 IAC § 13.9.

