

Conceptual Plan for Termination of the Iowa Comprehensive Petroleum Underground Storage Tank Fund

Goal:

To terminate the Iowa Comprehensive Petroleum Underground Storage Tank Fund Program (Fund), UST Fund and UST Fund Board by elimination of liabilities.

The cessation of the UST Fund Program has been an item for discussion for years and was most recently brought forth in Governor Branstad's veto message issued July 2, 2015 in regard to House File 652, in which he stated that the "State of Iowa and the UST Fund Board should work together to complete action on the remaining liabilities of the UST Fund". Following that message, the Board instructed the Administrator to develop and propose a concept plan to bring the program to a close. This paper outlines the concept plan for consideration and comment by the Board, and where appropriate, for implementation.

Background:

The UST Fund program was created in 1989 to assist owners and operators of petroleum underground storage tanks (USTs) comply with State and Federal environmental regulations. The main purpose of the program was to provide financial assistance for the cleanup of pre-existing releases to minimize societal and environmental damage, create a financial responsibility assurance mechanism (insurance) to pay for future releases and to provide loan financing for UST locations.

Through the operation of the program the Legislature has made changes, diverted monies and tasked the Board with projects outside that original scope. One of the earliest changes was a modification of the source of funding. Originally, the UST Fund was to receive the Environmental Protection Charge (EPC) a fee on petroleum diminution. In 1990, the source of monies for the UST Fund was changed to receive portions of the automobile use tax; the EPC was then directed to the Road Use Tax Fund (RUTF). In 2008, following changes to the RUTF, the main source of funding was shifted to the Statutory Allocations Fund (SAF) which derives its monies from driver's license fees, trailer registration fees, etc. In FY 2015, the EPC fee deposits to the RUTF were approximately \$21.6M, while the UST Fund received \$14M from the Statutory Allocations Fund.

The EPC sunset date of June 30, 2016 is fast approaching and while the sunset date does not eliminate funding for the UST Fund Program, the two revenues have long been believed to be tied together and even today, many still believe that the UST Fund receives the dollars generated by the EPC. The ending of the EPC will reduce funding to the RUTF and as the excess monies from SAF are deposited into the RUTF, the two are in a sense linked. It has also been long believed that as the EPC fee sunsets, funding

to the UST Fund program will also cease thus considerations have been in discussion for a number of years on how to end the Program near the sunset date of June 30, 2016.

Conceptual Plan:

To terminate the existing Fund requires closing the remaining claims and limiting new claims that may come to light (prior to a yet to be determined cut-off date) through a mix of the normal closure processes and administrative tools. During the move to cease operations, the base function to provide funding for assessment and corrective action work will continue in an effort to meet the mission of the program and that of the Iowa Department of Natural Resources (IDNR) to ensure protection of human health, public safety, and the environment.

The cessation will require a thorough review of the program liabilities. Current liabilities include open remedial fund (retroactive and remedial) claims, innocent landowner fund claims, and State Lead project claims. A summary of these liabilities is routinely presented for review on the monthly activities report. The estimated liabilities for all claims, as of September 30, 2015 are \$29,056, 511.

Working Assumptions

The Fund receives \$14 million annually from Statutory Allocations Fund (SAF) as provided in Iowa Code section 321.45. It is assumed that funding will continue through FY 2016 with an additional \$10.5 million to be allocated before June 30, 2016. Based on program reserve practices and confirmed by the actuarial study completed in FY 2015, the Fund is predicted to have sufficient resources to address the outstanding claims with projections through 2020. However, consistent with Board direction, the timetable has been moved up to address these outstanding claims before the end of fiscal year 2017.

The UST Fund program provides benefits through several programs. The primary claim programs provide financial assistance directly to claimants for the cleanup of pre-existing releases. Two secondary programs available to claimants provide financial assistance for copayment reimbursements and financial assistance for the removal of underground storage tank systems.

The UST Fund program also provides assistance to the IDNR through three main programs: a State Lead project for funding of work on select eligible and non-eligible UST sites; a community remediation program, and a program to provide funding where work is needed to re-assess a site following the issuance of a No Further Action certificate.

The primary UST Fund program claims are those pertaining to the cleanup of pre-existing releases, including those sites that have been re-opened. The number of primary claims, as of September 30, 2015 totals 498 claims. Since 2000, the number of open claims has steadily declined and it is assumed the number of claims will continue to decline at a rate of approximately 80 claims annually to a point where only a limited number of claims remain. In addition, it is assumed that the number of new claims will continue to be at a low and predictable rate.

Other working assumptions include:

1. Reserves as calculated by the Administrator and outside actuarial review will hold as estimated. The reserve estimate for the primary claims, as of September 30, 2015, is currently at \$26,563,234. The current Fund balance is \$36,188,289.
2. The program will be allowed to continue to operate to close claims through Fiscal Year 2017.
3. Post-program termination activities will be completed by the end of calendar year 2017.
4. The Board will be dissolved by repealing of Iowa Code 455G at the conclusion of the program.

Termination of the UST Fund program requires ending liabilities to the State of Iowa and to the UST Fund. This will require the closure (through normal process or administrative tools) of the remaining primary claims and termination of secondary programs. As discussed in previous workshops and Board meetings, not all claims are actively engaged due to issues such as ownership, access, and uncertainty. Regardless, the goal will be to close out as many claims as possible prior to the Fund termination.

Termination will also require ending the acceptance of any new claims to the UST Fund, including claims for pre-existing releases and claims by governmental entities. Secondary claim programs currently available to claimants may also be terminated. Claim programs provided to the IDNR will need to be terminated, with the one exception of the funding mechanism provided for the re-evaluation of sites issued a No Further Action certificate. This funding will need to be restructured and assigned to the post-closure receiving State program to provide resources to continue as a 'safety-net' for the State.

Claim Information

For an understanding of the claim status, the following information is provided for reference. The data, developed as of September 30, 2015 includes current data from the Iowa DNR and Iowa UST Fund.

	DNR Open LUST Sites	UST FUND Primary Claims	FUND RESERVE BALANCES
Site Classification	766	498	\$ 26,563,234.12
High Risk	431	298	\$ 20,463,568.05
Low Risk	167	108	\$ 2,970,232.69
No Action w/Free Product	67	38	\$ 1,734,143.37
Not Classified	101	18	\$ 671,814.10
No Action Required		31	\$ 568,710.79
Community Projects		5	\$ 154,765.12
Total	766	498	\$ 26,563,234.12
Total (-NAR, CRP)		462	\$ 25,839,758.21

Proposed Concepts to Termination:

Through previous work group sessions and Board meetings, a concept for termination of the program and Fund has been developed and discussed. Below is a detailed summary of the steps and schedule proposed to implement this plan.

By April 1, 2016, the Administrator estimates 360 claims (excluding claims with NAR classification) will remain in the program for closure through continued normal process or administrative means, including settlement and liability portfolio transfer (LPT). These are summarized below. However, depending on the timing and process, some of these claims may also be eligible for closure through settlement of LPT, described further below.

1. Contact Inactive and Stalled Site Claimants for Participation

A challenge to the successful closure of claims has been the inability to locate responsible claimants. Even when identified, a few claimants are not inclined or not able to participate in the program to conduct the required investigation and corrective action activities, despite the availability of funding. To identify and address these inactive or stalled claims, and in an effort to encourage participation, the Administrator drafted and has begun sending letters to individuals of record to seek their involvement with a claim or risk administrative closure of their claim. To date, letters have been issued to the claimants for 35 sites. Letters will continue to be issued through the end of 2015 to all inactive sites including those currently included in the State Lead claim programs. It is estimated that up to 60% (55 claims) will be administratively closed due to non-participation and best efforts at tracking claimants by March 31, 2016.

2. Limited Loss Portfolio Transfer (LPT) with Petroleum Marketers Management Insurance Company (PMMIC)

The Administrator has identified 14 sites where both the Fund and PMMIC share liability over claims on the same site. Third-party evaluations have been completed on these sites however new evaluations are planned for a few other sites to determine appropriate participation levels between the Fund and PMMIC in the sharing of costs. In order to complete a transfer, the Administrator will work with PMMIC to establish an equitable reserve calculation and propose a transfer of liability and reserve funding for those sites to PMMIC. Efforts will be made to quickly determine those participation levels and confirm agreements with PMMIC to achieve closure as quickly as possible. This would effectively terminate UST Fund action on 14 claims and transfer the duty to reimburse to a party that will work to close out the claim through their established processes. It is anticipated that the limited LPT would be complete by April 30, 2016.

3. Identify and Offer Settlement Agreements

The Board has settled individual and groups of claims for claimants in certain circumstances over the history of the program. In exchange for an agreed upon lump sum payment the claimant releases the Board from their duty to reimburse in the future for any and all claims. Based on the Administrator's review of the open claims, it is estimated there are up to 77 claims that are eligible to be consolidated into possible settlement agreements. These claims include those claimants who are active in responding to DNR requirements and have three or more eligible claims. In order to implement this concept, the

Administrator's office will issue letters to the prospective claimants by December 15, 2015 seeking their input on a possible settlement. If interested, we would expect to negotiate terms where a reserve amount will be proposed to the entity to allow them to continue working to properly close the claim to meet the requirements of the IDNR. Each entity will be subject to the terms of the Agreement for continuation of work and closure but with oversight from DNR. Assuming moderate success in this effort, it is estimated 40 claims could be removed from the current claim list.

In addition to those claimants with multiple claims, it is conceivable that owners and operators holding claim for one site may wish to pursue the option of a settlement. While technically feasible, this approach presents several concerns. While a settlement would provide for the closure of a claim for a finite cost, it is a risk that a claimant may not be able to satisfy. While some claimants may close their sites for less than the settlement amount, others may not and would still be responsible to meet IDNR requirements for closure regardless of whether the funds remain or not. Additionally, while it would not be the Board's expectation, there is also the chance that a claimant who settles for a lump sum may not complete the work and just keep the settlement monies. Both of these pose serious downsides for this option in regard to the Board's intent to ensure the funds are provided to meet the DNR's environmental goals.

4. Third-party Insurance or Liability Transfer Firm

The remaining universe of claims, to be determined after using other normal process and administrative tools is currently estimated at 360 claims, although possible exclusions are identified in section 5, below.

The claims remaining for this group will include a combination of all classified and unclassified sites. The claims currently managed by the Fund could be consolidated into a portfolio to be managed by a third-party. This Loss Portfolio Transfer (LPT) approach has been used successfully on a subset of sites in the past with PMMIC. For purposes of this discussion, the remaining sites that qualify for inclusion on such a transfer would then be removed from further responsibility and deemed administratively closed by the Fund. To accommodate this LPT, funding would be transferred to the third-party liability company (an insurance company or other specialized risk-transfer company) to complete the required remediation to the terms of the agreement.

Determining the appropriate terms of the agreement will be a major consideration prior to issuing a Request for Proposal. Considerations will need to include a moral hazard provision to ensure appropriate handling of State Funds to facilitate closure of the claim sites in a manner consistent with the DNR environmental goals and within an appropriate time frame established by the Board. If closure is not attained or if the claims stall, a claw-back provision could be included to have the site addressed by the State at a later date.

Under this scenario the Board would pay a lump sum to the third party who would assume all outstanding liabilities for the claims, as defined in Iowa Code sections 455G.9 and 455G.21, to be transferred. The dollar amount of such a transfer would be a function of outstanding reserves, the perceived risk of change in those reserves over time, and other administration costs. A third-party specialty environmental insurance carrier or transfer firm would respond to claims within defined

parameters and limits. The challenges with this approach will be to provide some level of confidence regarding the number and size of claims that may result; establishing the moral hazard boundary between the interests of the DNR and the availability of coverage; obtaining a bid for an implementable program from the private insurance market or transfer firm.

Exercising this component of the termination plan will be a key component of the Fund sunset and will account for Fund closure of the vast majority of open claims. It will also require transfer of significant funds from the current program that will no longer be available for other sites. A premium will also be calculated into this transaction. Steps necessary to facilitate this LPT will include:

- Review and evaluate the sites eligible for LPT by identifying those with a likely closure date beyond 2016 and confirming the necessary reserves (complete by June 1, 2016).
- Prepare a draft agreement to facilitate the LPT (complete by June 1, 2016).
- Prepare a Request for Proposal (RFP) to solicit interested third-parties (by August 1, 2016).
- Receive and review bids (October – December 2016).
- Negotiate and award the final LPT (by March 15, 2017).

Following a transfer of the claims pursuant to a LPT, the Board would have no further duty to pay for activities on that claim or a duty to maintain a claim file, except as required for State record retention requirements. By June 30, 2017, all records should be transferred to the receiving State entity.

LPT Groups

During the last two months, questions have been presented to various stakeholders seeking input on how to potentially group claims to provide a distinction in developing more than one LPT. A review of the open claims indicates no significant common thread to allow for a simple grouping. A review of the claim locations, as of September 30, 2015 indicates the claims are located throughout the State, with greater concentrations in eastern Iowa, see below:

CLAIMS BY DNR FIELD OFFICES

FO #	High Risk	Low Risk	NAR-FP	Not Classified	FO –Total
1	82	28	3	3	116
2	34	10	3	3	50
3	26	7	13	2	48
4	47	23	5	5	80
5	44	14	4	1	63
6	65	26	10	4	105
Total	298	108	38	18	462

The data table provides information on the location of 462 Open Claims, excluding the 31 claims associated with sites classified No Action Required and the 5 State Lead CRP claims. It is conceivable that the claims could be divided on a geographical basis in a north (FO 1-3) to south (FO 4-6) grouping

with 214 and 248 claims respectively. However, given the significant variations among the claim sites, it is recommended one group of all open and active claims as of June 1, 2016 be considered for the LPT.

5. Default Combined DNR/Iowa Finance Authority (IFA)

In addition to claims closed by an administrative measure, there are additional claims that may be deemed unqualified for a LPT, either to protect the interests of the State or the interests of the LPT bidder. Claims that fall into this group may include:

- a) Claims unlikely to close due to insufficient funding, which may include: claims anticipated to exceed the \$1 million statutory funding cap and claims partially funded pursuant to a settlement agreement or partial denial of funding (estimated 15 claims).
- b) Claims classified No Action Required where free product remains. This category may be considered for exemption due to planned rule modifications which may allow the DNR greater flexibility to closing such sites (estimated at 15 claims).
- c) Claims classified No Action Required, where only final well closure and payment of outstanding invoices remain (estimated at 30 claims).

The Administrator will maintain a file of the claims closed by administrative means during the termination process. For many of the claims, the identity of the responsible party is not known thus the IDNR may have no one to hold accountable to address the UST contamination. The sites associated with these claims, in addition to other non-funded sites may remain open as an environmental concern for an indefinite timeframe.

Funds remaining following normal closure, LPTs, and settlement agreements could be transitioned to the Iowa Finance Authority for management under the supervision and implementation of the IDNR. Additional funding, if any, provided to the UST Fund after June 30, 2016 could also be segregated for this purpose. This would be an extension, albeit much smaller in scope and financial demand, than the current Fund. Funds for this category could also be transferred from the current Fund as a foundation to manage the State Lead program claims for site re-opened following issuance of a No Further Action certificate, claims closed by administrative means, and other non-funded sites. Some of the same challenges exist with this approach: establishing the moral hazard boundary between the interests of the IDNR and the availability of funds; and securing a continuing source of funding to address developing and future claims.

Legislative and Rule Making Implications

The Iowa UST Program, UST Fund, and UST Fund Board were created in HF 447 (Petroleum Underground Storage Tank Act of 1989). The program is codified in Iowa Code 455G and rules are adopted in Iowa Administrative Code chapter 591. In order to terminate the Program liabilities, several modifications will be required including, but not limited to, the following:

- Iowa Code 455G.3 provides for the creation of the UST Fund and allows for the creation of individual accounts used for the distinct purposes, such as the remedial account, the loan guarantee account, and the marketability fund for the funding of innocent landowner claims.

If a separate fund is created to provide funding for the Department it is recommended that a fund be created that can be separate from the General Fund potentially to be managed by the Treasurer of the State, as provided in 455G.3 in regard to the UST Fund.

- Iowa Code 455G.3 provides for non-claim related program liabilities including annual appropriations to the DNR for technical reviews (\$200,000), to the Department of Agriculture and Land Stewardship for fuel quality inspections (\$250,000), and for administration of a reimbursement program to provide owners with UST operator training (\$250,000). A determination is needed as to the necessity of these liabilities and if to be continued, a mechanism to fund the liabilities must be determined.
- Iowa Code 455G.6(17) and Iowa Administrative Code (591) Chapter 9 provides the structure for the Board to transfer all or a portion of the liabilities through a loss portfolio transfer (LPT). Pursuant to the regulations, the Board's duty to reimburse a claimant is terminated following the transfer of the claim through a LPT.
- Iowa Code 455G.9 provides the duty for monies in the remedial account to pay for any eligible claim made under that section. Unless repealed or modified, the Board may have a statutory obligation to provide for payment of any claims made pursuant to Iowa Code 455G.9 and 455G.21 not transferred or for those claims made after a loss portfolio transfer. Claims provided under this section include:
 - Remedial (governmental) claims including claims for contamination encountered during repair or improvement of a utility or public improvement, claims for properties acquired by tax deed, or claims for properties acquired by eminent domain.
 - Tank closure claims that provide up to \$15,000 for the removal of an underground storage tank system.
 - Innocent Landowner claims including late filed remedial claims, acquired property claims, and pre-regulation claims. New claims in this series can be terminated by a change of rule.
- Iowa Code 455G.9(1)(k) as currently written requires an agreement between the Board and IDNR in order to provide funds for the assessment and corrective action activities required to re-evaluate a site following the issuance of a No Further Action certificate. This provision was created to provide a 'safety-net' for owners, operators, and the IDNR to ensure that funding is available to assist the IDNR should an unforeseeable event occur at a closed UST site. This provision should be rewritten to ensure the safety-net remains viable for the future.

- Iowa Code 455G.13 provides the cost recovery enforcement. Liens have been filed on properties throughout the State as a means of attaining the recovery of funds paid for corrective action work on non-eligible sites. A determination must be made on the disposition of the liens.

Impacts on Reserves and Available Funds

As of September 30, 2015, the available balance of the Iowa UST Fund is \$36,188,289. The reserve for the primary claims is \$26,563,234, while total liability for all claims types is \$29,056,511. For the remainder of fiscal year 2016, it is anticipated additional revenues to the UST Fund will be approximately \$10.6 million and expenditures for claims and administrative costs will approach \$10.0 million, thus indicating an ending balance near \$36.6 million.

Based on the analysis of the stalled claims for which activities are currently being pursued, the estimated reserves will be reduced by approximately \$1.5 million. Changes will continue to be noted for the remaining and ending liabilities are estimated to be approximately \$22.0 million at the end of FY 16.

The following table provides information on the reserves for each claim type currently in use:

Claim Type	
Retroactive Claims (26 claims)	\$1,356,648.54
Remedial (346 claims)	\$19,153,769.66
Innocent Landowner (113 claims)	\$5,811,717.41
Global Settlement (73 claims)	\$360,573.48
NFA Re-Opener (13 projects)	\$241,098.51
State Lead Closure Contract (73 claims)	\$1,830,746.71
Tank Closure (31 claims)	\$301,957.00
	\$29,056,511.31

Other Considerations

The Iowa UST Program has historically provided benefits to UST owners and operators, landowners, and to State entities. The legislative intent identified in the preamble of HF 447 was to assist UST owners and operators, especially small businesses, comply with Federal technical and financial responsibility standards. HF 447 also recognized the importance that the UST Fund Program be an interim measure, be available to minimize societal costs and environmental damage, and be available to maintain Iowa's rural petroleum distribution network. Upon cessation of the UST Fund Program, many benefits created to advance these measures may be lost.

As an alternative to closing of the UST Fund Program in its entirety, the State of Iowa may choose an alternate approach to maintain a Fund and a State Program. Program administration could be maintained using an independent entity or may be transferred to a State entity, such as the Iowa DNR and/or Iowa Finance Authority. If internalized as a State function, the receiving State entity would likely require additional administration costs for added staffing and facilities. If administration remains

outsourced, administrative costs should decrease considerably as the claims are reduced although such costs cannot be eliminated. Benefits of maintaining administration by an independent party would include reducing the need to retain additional State staff and it may provide greater transparency on identifying overall program costs.

As sufficient funds appear to exist based on the current reserves and as supported by the actuarial review, maintaining a State Fund may allow the continuation of both the primary and secondary programs to the benefit the State and UST owners and operators, potentially reducing the effects of the stalled claims on society. If no additional funding is provided, the proposed changes to curtail non-claim related liabilities identified in Iowa Code 455G.3 and to restrict new claims would likely need to be considered.

Records Retention

The Iowa UST Program has been in existence for more than 26 years and as a result has accumulated various records documenting the history of the Program. The State of Iowa requires certain records to be maintained indefinitely while other records may be disposed of following an approved schedule. Prior to the cessation of the UST Fund program, a determination must be made as to the final disposition of all written and electronic records of the Program. It may be necessary to allocate a period of time to provide for the transfer of documents and the establishment of a pool of funds to pay for continued storage and for the final disposal of the program records.