

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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**ITEM**

**6**

**DECISION**

**TOPIC**

**28E Agreement Between the Iowa Underground Storage Tank Fund Board and the Iowa Department of Natural Resources for Long-term Funding of the Department's Underground Storage Tank Section**

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The Department is requesting approval for entering into a 28E agreement with the UST Fund Board ('the Fund') that will provide a portion of the funding needed for the management and operation of the Department's UST Section, and for matching federal UST and LUST program grants. Receipt of the funding is contingent upon a) the DNR meeting with the Fund administrator on a regular basis during the year, b) developing a mutually agreed upon annual goal with associated milestones to be met by the DNR, and c) quarterly meetings between DNR central and field office staff to set priorities and report on progress.

The source of funding for this agreement is the state's tank registration fees. Per statute (455B.479), an owner or operator of an underground tank shall pay an annual storage tank management fee of sixty-five dollars for each tank over one thousand one hundred gallons capacity. DNR collects the fees and issues the tags. Twenty-three percent of the fees collected are deposited in DNR's storage tank management account of the groundwater protection fund. Seventy-seven percent of the fees are transferred and deposited in the comprehensive petroleum underground storage tank fund which is managed by the UST Fund Board. A total of \$500,000 to \$525,000 is collected on an annual basis. In FY'08 \$385,000 was transferred to the UST Fund Board while DNR retained \$115,000.

Funding for DNR's Underground Storage Tank Program (UST) remains problematic. In order to have a balanced budget DNR has, for the past four years, relied upon the portion of the tank tag fees that are transferred to the UST Fund Board. The mechanism for the reverse transfer has been a 28E Agreement with the Fund. The Department submitted a proposed change to the statute to have 100% of the tank registration fees deposited in DNR's UST management account of the groundwater protection fund. The bill, however, did not receive strong support and failed to move beyond legislative subcommittees. This alternate approach (28E agreement) was proposed by the UST Fund Board. Essentially, this agreement is a continuation of the practice of the past four years,

with a couple key differences. This long-term agreement will benefit the department and its mission in the following ways:

- Provides a reliable, long-term, funding source for essential operations of the UST program. The agreement is written in such a way that DNR can plan and manage its annual budget with a certainty on the amount of revenue it will receive from the Fund. Any failure of DNR to meet milestones (and consequential withholding of funds) will not be applied to the current budget year, but rather the following year. Further, the Fund has committed to payment upon completion of the milestones if completed within the following year.
- Provides a mechanism for the DNR and the Fund to jointly plan and determine strategies that each agency can implement in order to achieve the overall goal of closing LUST sites prior to the 'sunset' date of the UST Funds.
- Has built in flexibility to allow DNR to address unplanned events /unforeseen time commitments which may demand DNR's attention as a higher priority than the set milestones (e.g., floods of 2008, economic stimulus funding and associated planning).
- The agreement is written such to not limit the funding amount to only the equivalent of the tank tag fees. Additional funding could be obtained with negotiated additional milestones.

Wayne Gieselman, Administrator  
Environmental Protection Division

March 27, 2009

**28E AGREEMENT**  
**BETWEEN the IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, and the IOWA DEPARTMENT OF NATURAL RESOURCES for FUNDING AND MANAGEMENT of the UNDERGROUND STORAGE TANK SECTION of the IOWA DEPARTMENT OF NATURAL RESOURCES**

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

**I. PURPOSE**

The purpose of this Agreement is to provide the DNR with an ongoing funding source for its UST Section in order to promote and achieve the mutually agreed mission and goals of the Board and DNR to protect human health and the environment by prevention and remediation of petroleum releases from underground storage tanks. To achieve this purpose, the Board agrees to provide the DNR with funds in an amount at least equivalent to the UST tank management fees collected and allocated to the Board pursuant to Iowa Code sections 455B.479, 455G.8"3" and 455G.6(15)“a.” The Parties do not intend to create a separate legal entity under this Agreement, and no real or personal property will be used or acquired under the terms of this Agreement.

**II. TERM**

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

**III. JOINT RESPONSIBILITIES**

Prior to fiscal year 2010, and prior to each subsequent fiscal year, representatives of the DNR and the Board administrator shall meet and develop mutually acceptable milestones for the joint missions and goals to be accomplished during the upcoming fiscal year and corresponding funding amounts. It is the responsibility of each party to negotiate in good faith to establish manageable milestone goals and responsibilities. Once established, the milestones shall be attached to this Agreement, and incorporated herein, as an addendum to the Agreement. It is understood by the parties that no provision in this Agreement prohibits an addendum or amendment to this Agreement from providing the DNR with funds in excess of the annual UST tank management fees allocated to the Board. The general expectation of both parties is that the base amount of

tank tag fees and a single broad goal related to program improvement or scientific research annually serve as the starting points.

The parties will meet regularly, and in no event fewer than 8 times in a fiscal year, to maintain a joint strategic discussion of DNR, EPA and UST Fund Board priorities. The discussion and resulting plans should focus on the statutory funding terms for the entire program and meeting closure requirements at sites eligible for funding as well as opportunities to address targeted work at all sites in the interest of program closure and near term protection of human health.

#### **IV. DNR RESPONSIBILITIES**

**A.** The DNR shall include in each addendum milestone requirements to conduct a meeting between representatives of the DNR central office and the DNR field offices to review UST Section priorities and accomplishments on a quarterly basis (or otherwise agreed to basis), and prepare written report detailing activities performed during the previous quarter, reconciling those activities to the established priorities and establishing the priority list for the next quarter.

**B.** Should the parties not reach an agreement on acceptable milestones prior to the start of the new fiscal year, this Agreement shall remain in effect; however, the Board will be relieved of its responsibilities contained in Section V of this Agreement for the new fiscal year unless or until an addendum is attached hereto.

**C.** Failure by the DNR to meet milestones contained in an addendum will not be considered a breach of this Agreement and will not affect the Board's payments for the fiscal year term of the addendum. Unless otherwise amended, the obligation by the Board to make payments for the completion of the milestones, however, shall result in a pro rata reduction from the payments owed by the Board in the subsequent fiscal year for any period of time for which the DNR fails to timely meet any part of a milestone to the satisfaction of the Board. Upon successful completion, before the end of the subsequent fiscal year, of all outstanding milestone requirements for which payment was withheld, the Board may pay the DNR the payment(s) withheld, and resume payments pursuant to the schedule described in Section V of the Agreement. The failure of the DNR to meet milestone requirements, and the suspended payment by the Board, shall be documented in the addendum to this Agreement for the subsequent fiscal year.

#### **V. BOARD RESPONSIBILITIES**

**A.** Prior to fiscal year 2010, and prior to each subsequent fiscal year, the Board, in consultation with the DNR, shall prepare an estimate of the UST tank management fees to be collected and allocated to the Board during the upcoming fiscal year. Pursuant to this estimate, the Board shall provide the DNR with funds in the amount of this estimate, subject to contingencies stated in this Agreement, in installments

during the fiscal year as mutually agreed to by the parties. The estimate and installment schedule shall be contained in the addendum described in Section IV of this Agreement.

**B.** If the Board determines prior to the final installment for a fiscal year that the actual amount the UST tank management fees allocated to the Board during the fiscal year varies from the estimated amount by 10% or more, the Board shall adjust the final installment for the fiscal year accordingly to reflect the actual amount allocated to the Board. If, however, the variance between the estimated amount of UST tank management fees allocated to the Board and the actual amount is less than 10%, the final installment shall remain unchanged.

**C.** Notwithstanding any provision in this Agreement to the contrary, this Agreement shall not prohibit the Board from providing funds to the DNR in excess of the annual UST tank management fees collected and allocated to the Board.

## **VI. FINANCING**

The Board shall pay all costs associated with the administration of this Agreement in accordance with the terms of Section V of this Agreement. The DNR shall use the funds provided by the Board exclusively for the operation of the DNR's UST Section. Use of the funds for any other DNR sections or programs is not authorized by this Agreement, and will permit the Board to withhold an amount equivalent to the misused funds from future installment payments. DNR shall not seek additional funding from any of the funds maintained by the Board, other than through this Agreement or the amendment of this Agreement.

## **VII. AMENDMENT**

This Agreement may be amended from time to time by written agreement of the parties. The right to amend shall extend to the provisions of an addendum hereto, such as amendments to DNR milestone requirements and deadlines and Board funding estimates and installment schedules. All amendments shall be in writing, signed by both parties, and filed with the Secretary of State.

## **VIII. TERMINATION**

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

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

1. There are insufficient funds or staffing resources available to allow a party to fulfill its obligations under this Agreement; or
2. A change in the law prevents or substantially impairs a party's ability to participate in this Agreement.

**IX. NOTICES**

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

To the Board  
 Iowa UST Fund Board  
 2700 Westown Parkway, Suite  
 320, W. Des Moines, Iowa 50266

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

**X. APPLICABLE LAW**

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

**XI. FILING AND RECORDING**

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

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

**IOWA COMPREHENSIVE  
 PETROLEUM UNDERGROUND  
 STORAGE TANK FUND BOARD**

**IOWA DEPARTMENT OF  
 NATURAL RESOURCES**

BY: \_\_\_\_\_  
 Susan Voss, Chair

BY: \_\_\_\_\_  
 Richard Leopold, Director

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

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