

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

ITEM

19

DECISION

TOPIC

Final Rule - Chapter 134 – Underground Storage Tank Licensing and Certification Programs

The Department presents these rules for adoption and filing by the Commission. The Notice of Intended Action was published as ARC 7620B in the March 11, 2009 issue of the Iowa Administrative Bulletin.

In summary these rules outline the duties and training requirements for professionals who are licensed by the DNR to conduct UST work in Iowa. The key changes are: required licensing of those people who remove tanks; soil and groundwater sampling at UST closures be conducted by a certified groundwater professional; required insurance liability coverage of \$1,000,000; required inspections at UST installations; increase in licensing fee to \$200 biennially; expanded reciprocity criteria for training and exams; adds duty for UST professionals to report confirmed releases; adds cathodic protection tester training requirements; and conflict of interest provisions.

The Department held three public hearings and received four comments. Three of the comments discussed industry's concern over costs and liability stemming from the new duty to report, and one commenter opposed the requirement that removers must be certified groundwater professionals to conduct tank closure sampling. As a result of discussions with stakeholders and the public comments, the Department made the following changes to the Notice of Intended Action.

- The duty to report rule had been changed so that UST professionals report suspected and confirmed releases on a Department form to the UST owner and operator with recommendations on further actions the owner and operator should take. The UST professional is not required to directly report suspected releases to the Department. The UST professional is required to report confirmed releases by sending a copy of the reporting form within seven days to the Department.
- The Department has chosen to adopt the rule that allows licensed UST removers to conduct the soil and groundwater sampling required as part of an UST closure investigation if they are a certified groundwater professional under 567--Chapter 134, Part A, or if they contract with a certified groundwater professional. The Department feels this is a necessary to ensure reliable soil and groundwater testing occurs as part of the closure process.

Elaine Douskey
UST Program Supervisor
Land Quality Bureau
April, 2009

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby amends Chapter 134, “Underground Storage Tank Licensing and Certification Programs,” Iowa Administrative Code.

These amendments rescind rules 567—134.18(455B) to 567—134.28(455B) and adopt new rules 567—134.18(455B) to 567—134.29(455B) in Part C of 567—Chapter 134. In addition, the amendments revise the title of Part C and amend definitions and add new definitions to rule 567—134.17(455B).

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 11, 2009, as **ARC 7620B**. The Department held three public hearings. The Department received four comments at the hearings. Three of the comments discussed industry’s concern over costs and liability stemming from the new duty to report, and one opposed the requirement that removers must be certified groundwater professionals before they can do tank closure sampling.

The following changes have been made to the Notice of Intended Action:

1. The Department has amended the duty to report rule so that UST professionals report suspected and confirmed releases on a Department prescribed form to the UST owner and operator with recommendations as to what further investigatory and response actions the owner and operator should take. The UST professional is not required to directly report suspected releases to the Department. The UST professional is required to report confirmed releases by sending a copy of the reporting form within seven days to the Department.
2. The Department has chosen to adopt the rule that allows licensed UST removers to conduct the soil and groundwater sampling required as part of an UST closure investigation if they are a certified groundwater professional under 567--Chapter 134, Part A, or if they contract with a

certified groundwater professional. The Department feels this is a necessary to ensure reliable soil and groundwater testing occurs as part of the closure process. The Department intends to initiate rule making to amend 567--135.15(3) to further clarify that certified groundwater professionals will be required to conduct the closure investigation unless the Department approves an alternative as part of the permanent closure of USTS.

This amendment is intended to implement Iowa Code 455B.474.

These amendments shall become effective on July 22, 2009.

The following amendments are adopted.

ITEM 1. Amend 567—Chapter 134, title of Part C, as follows:

~~UNDERGROUND STORAGE TANK INSTALLER AND
INSPECTOR LICENSING
LICENSING OF UST PROFESSIONALS~~

ITEM 2. Amend rule 567—134.17(455B), definitions of “Inspector,” “Installer,” “Liner,” “Maintenance,” “Repair” and “Tester,” as follows:

~~“Inspector”~~ Installation inspector means a licensed individual who is engaged in the inspection and approval of the installation of new or upgraded underground storage tank systems.

~~“Installer”~~ means a licensed individual or licensed company engaged in the installation of a new underground storage tank system or the upgrading ~~or lining of existing~~ of underground storage tank systems.

~~“Liner”~~ means a licensed company or an individual who ~~lines a tank using an acceptable procedure under subrule 134.24(2)~~ provides services to install underground storage tank lining and to repair underground storage tanks.

~~“Maintenance”~~ means ~~minor service work to existing equipment, associated with underground storage tank systems, which is installed above grade level and can be observed from grade level. Maintenance does not require licensing~~ the normal operational upkeep to prevent a UST system from releasing a regulated substance or to ensure that a release is detected.

~~“Repair”~~ means ~~modification or correction of any existing portion of an underground storage tank system through such means as replacement of valves, fill pipes, vents, liquid level monitoring systems, and installation of spill and overfill devices, provided the activity occurs above grade, and the maintenance and inspection of the efficacy of cathodic protection devices. Repair does not include activities which are maintenance as defined in this chapter.~~ to restore any portion of a UST system that has failed. “Repair” does not include the activities defined in this

rule by “modification” or “replacement.”

~~“Tester” means a licensed company or individual who tests tanks, lines, leak detection systems, or monitoring systems, using an acceptable procedure under subrule 134.23(2) as required by 567—Chapter 135 and this chapter. For the purposes of this definition, an owner, operator or one of their employees~~ an employee of an owner or operator performing ~~vapor monitoring, cathodic protection tests, statistical inventory reconciliation or using an automated in-tank gauging device installed at a site location they own or operate shall not be defined as a tester. An owner or operator or one of their employees may also perform volumetric, nonvolumetric or vacuum tests on their own tanks and hydrostatic pressure tests on their own lines, provided they have received certification from the manufacturer or supplier of the system for its usage and the system has been approved by the U.S. EPA~~ leak detection or cathodic protection monitoring, as required by 567—Chapter 135, is not a tester.

ITEM 3. Amend 567—134.17(455B) by adopting the following **new** definitions in alphabetical order:

“Cathodic protection tester” means a licensed individual who provides installation, maintenance and testing services on underground storage tank corrosion protection systems.

“Install” or *“installation”* means the physical construction of a UST system including, but not limited to, activities such as excavating, backfilling, testing, placement of the tank, underground piping, release detection devices, corrosion protection systems, spill and overflow devices and any associated administrative activities such as notifications, record keeping and record submissions.

“Modification” means to change a UST system currently in use by the installation of new UST system components. “Modification” includes, but is not limited to, the addition of corrosion protection to a previously lined tank, installation of new underground piping or replacement of

existing underground piping, changing the primary release detection method to one of the methods listed in OAR 340-150-0450 through 340-150-0470, or adding secondary containment. “Modification” does not include those activities defined in this rule as “repair” or “replacement.”

“*Remover*” means a licensed individual who is engaged in permanent closure activities by removal or filling in place of underground storage tank systems in accordance with 567—135.15(455B).

“*Replacement*” means to effect a change in any part of a UST system above grade by exchanging one unit for a like or similar unit. “Replacement” does not include activities defined in this rule as “repair” or “modification.”

“*Service technician*” means a non-licensed individual who works for a licensed individual or a licensed company or who is certified by a manufacturer to conduct modification or replacement activities at UST facilities.

“*Underground storage tank professional*” means an individual licensed under Part C of this chapter.

ITEM 4. Rescind rules 567—134.18(455B) to 567—134.28(455B) and adopt the following **new** rules:

567—134.18(455B) Applicability of Part C. All persons and companies that are currently licensed under the former board rules in rescinded 591—Chapter 15 shall be subject to Part C of this chapter. All persons conducting underground storage tank installations and installation inspections as provided in 567—subparagraph 135.3(1)“e”(2) and installers, installation inspectors, liners, testers, and removers shall be licensed by the department in accordance with Part C of this chapter. Service technicians as defined in rule 134.17(455B) are exempt from licensure under Part C of this chapter.

567—134.19(455B) General licensing requirements. Applications for licenses shall be submitted on a form provided by the department along with all required supporting documentation. Existing licenses as of [insert the effective date of these amendments] and new licenses shall expire December 31, 2010. Subsequently, licenses shall be issued and renewed on a two-year calendar basis, beginning January 1, 2011. All applicants must be at least 18 years of age. The applicant shall not have been issued a certificate of noncompliance from the child support recovery unit.

134.19(1) Licensing classifications. A separate license will be issued for:

- a. UST installers and installation inspectors;
- b. UST removers;
- c. UST testers;
- d. Cathodic protection testers; and
- e. UST liners.

134.19(2) Individual and company licenses. A company employing licensed individuals for installation, upgrading, removal, lining or testing of underground storage tank systems shall be registered as a licensed company. A company shall have its license revoked if it fails to employ at least one licensed individual or if it employs unlicensed individuals to do work requiring a license. Individuals who are not companies as defined in rule 134.17(455B) are required to have an individual license only.

134.19(3) License fees. A \$200 fee shall be submitted with a company license application and with an individual license application. Companies and individuals are licensed separately as set forth in subrule 134.19(2). Individuals may apply for multiple individual licenses at once, paying only one \$200 processing fee. All fees are nonrefundable.

134.19(4) License issuance. Upon receipt, review, and acceptance of the application and application fee, the department shall furnish the applicant with a license showing the name of the individual/company and the expiration date. In order to remain valid, the license shall be renewed

prior to the expiration date specified on the license.

134.19(5) Environmental liability insurance. All license holders, including licensed companies, are required to have environmental liability insurance with minimum liability of \$1 million per occurrence, as well as in the aggregate. Current license holders shall have 45 days from [insert the effective date of these amendments] to upgrade their environmental liability insurance.

a. Licensed company. A licensed company is required to provide environmental liability insurance for all licensed activities of the company and its licensed UST professionals.

b. Licensed individuals. Each licensed installer, installation inspector, remover, liner, cathodic protection tester, and tester is required to provide proof of environmental liability insurance covering licensed activities. The insurance may be provided by the licensed company employing the licensed individual or by the individual licensee.

c. Insurance exception. UST professionals employed by owners or operators of underground storage tank systems to work only on the owner's or operator's private system(s) are exempt from insurance requirements.

d. Forms of acceptable insurance. All parties covered by the licensing provisions of Part C of this chapter shall provide evidence of environmental liability insurance to the department upon request.

(1) Environmental liability insurance may be provided by a private insurer authorized to do business in Iowa.

(2) Evidence of environmental liability insurance may be provided using methods of self-insurance as outlined in 567—Chapter 136.

134.19(6) Examinations and course of instruction. Prior to the issuance of a license as an installer, installation inspector, remover, liner, tester, or cathodic protection tester, the applicant shall successfully complete a department or department-approved course of instruction and pass a qualification examination approved by the department.

a. Examination requirements for all license holders.

(1) A passing grade of not less than 85 percent is required on the Iowa examination.

(2) Candidates who have failed the examination may not perform work unless supervised by an appropriately licensed individual.

(3) A fee reflecting the actual costs of developing and administering each course of instruction and examination shall be charged.

(4) Nothing in Part C of this chapter shall limit the right of the department to require additional educational requirements of license holders.

b. Exceptions to completion of the course of instruction or examination. All license holders, except cathodic protection testers, are required to complete the course of instruction. Cathodic protection testers are only required to maintain NACE certification, STI cathodic protection certification or equivalent certification approved by the department. Testers may qualify for reciprocity under paragraph 134.19(6)“c” if the department approves the public or private certification or training program completed. For testers, the department will approve or deny the certification based upon a review of the course of instruction, applicable manuals and handouts, and the examination.

c. Reciprocity. Persons who are certified under another state or federal regulatory program which has been approved by the department may be eligible for licensure in Iowa without having to take a course of instruction or pass the examination. However, these individuals shall still pay the \$200 application fee and qualify for license renewal by fulfilling continuing education requirements.

d. Repeat examination attempts. An applicant who fails an initial examination may take a second examination within one calendar year without having to retake the course of instruction. Failure of the second examination will result in termination of the application. A person may reapply for licensure. The applicant shall complete a course of instruction before retaking the examination.

134.19(7) Continuing education. Each person licensed under Part C of this chapter shall complete a department-approved refresher course every two years, except for licensed cathodic protection testers. Cathodic protection testers shall maintain NACE or STI certification or another certification approved by the department. Beginning with the first application for license renewal, each UST professional shall provide evidence to the department, prior to submission of the application for renewal, that at least 12 credit hours of department-approved continuing education have been satisfactorily completed since the last license was issued or renewed. The department may limit the number of credits granted for similar courses during a renewal period. The requirement for continuing education may be met only by those continuing education offerings which have been approved by the department.

a. Form of approval. Approval may take the form of:

(1) Program approval granted by the department to the sponsor or instructor of a continuing education offering;

(2) Individual requests for credit granted by the department to an installer or inspector for a continuing education offering whose sponsor or instructor did not seek program approval; or

(3) Blanket approval granted by the department to continuing education offerings sponsored by the department or other professional organizations whose standards have been approved by the department.

b. Procedures for department approval of continuing education offerings.

(1) Application for program approval shall be made by the sponsor or instructor to the department and include an agenda or an outline of the content of the proposed continuing education offering.

(2) Application shall be made at least 45 days prior to the desired effective date of approval.

(3) The application shall be reviewed by the department, and notice of approval or denial of program approval shall be sent to the sponsor or instructor. Credit hours may be limited by the

department based on program content.

c. Proof of participation. A certificate of satisfactory completion of a department-approved continuing education offering issued by the sponsor or instructor constitutes sufficient evidence of satisfactory completion for purposes of meeting the continuing education requirement.

567—134.20(455B) License renewal procedures.

134.20(1) Renewal applications shall be made on a form provided by the department and received by the department or postmarked no later than November 1 of the expiration year of the license at issue. The renewal application shall be accompanied by the \$200 renewal fee as specified in subrule 134.19(3) and proof of environmental liability insurance as required under subrule 134.19(5). Applications received after the November 1 deadline, but before the January 1 expiration date, will be accepted and will require an additional \$50 late fee.

134.20(2) To be eligible for renewal, the licensee shall fulfill all continuing education requirements, along with any other requirements set forth in each license classification rule under Part C of this chapter. The department will consider all past disciplinary actions against the licensee when evaluating renewal eligibility.

567—134.21(455B) Conflict of interest. A licensed individual or a licensed company may not conduct a UST installation inspection at any facility at which the licensee is engaged in professional services which are regulated under Part C of this chapter, e.g., installations, modifications, repairs, or replacements of UST systems. A person working for a licensed company as an installer, liner, remover, or tester shall not provide services as an installation inspector on sites where UST systems are being installed or lined by the person's prior employer until six months after leaving the prior employer's licensed company. If a licensed individual leaves the employment of a licensed company, the licensed company shall notify the department within 30 days of that occurrence.

567—134.22(455B) Duty to report. Any UST professional licensed under Part C of this chapter shall timely report suspected and confirmed releases to report within 24 hours of discovery (6 hours if a hazardous condition exists) as described in 567--135.6 to the owner and operator on a form prescribed by the department. The UST professional shall recommend to the owner and operator any release confirmation actions or other investigatory and response actions which in the professional's judgment would be consistent with the requirements of 567--135.6(455B). The UST Professional shall submit a copy of the form to the department within seven days of discovering a confirmed release. The UST professional is not responsible for reporting a suspected release as described in 567--135.6(455B) directly to the department.

567—134.23(455B) OSHA safety requirements. All licensed individuals and companies regulated under Part C of this chapter shall conduct their work as required by OSHA safety requirements defined under 29 CFR § 1910 (2006). OSHA standards apply whenever flammable, combustible, or hazardous materials are present, especially during the following activities:

1. Excavating, placing underground storage tank systems in excavations, and ballasting underground storage tank systems with flammable, combustible, or hazardous materials.
2. Purging, cleaning, and removal of underground storage tank systems which have contained flammable, combustible, or hazardous materials.
3. Testing as a part of an installation or after the system has been placed in service.

567—134.24(455B) Installers.

134.24(1) Licensure qualifications. An installer of an underground storage tank system shall apply for a license as an installer and shall indicate on the license application the types of installations and upgrade procedures the installer intends to use. In addition to the licensing requirements listed under rule 134.19(455B), an installer must:

- a. Provide documentation of at least two years of relevant experience;
- b. Provide documentation of manufacturer certification for past installations and proof of

current certification for future work including, but not limited to, tank systems, piping systems, leak detection and monitoring systems, and corrosion protection systems; and

- c. Have completed at least 40 hours of OSHA training.

134.24(2) Renewal qualifications. To be eligible for license renewal, an installer shall:

- a. Fulfill the department's continuing education requirements in rule 134.19(455B);
- b. Maintain manufacturer certification if available and notify the department within 30 days if the certification is lost; and
- c. Complete the annual eight-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) refresher course.

134.24(3) Responsibilities of installers. A licensed installer shall be on site during the performance of all work, including subcontracted work, for which the owner/operator has contracted to have completed by the installer. The licensed installer is responsible for all UST-related work at the site and must ensure that the performance of the work and the finished work conform to industry standards and codes and manufacturers' requirements. The licensed installer is responsible for ensuring that all local installation permits and notice requirements are satisfied. Tank installation includes all work associated with the placement of the tanks, pipes, pumps, dispensers, gauging systems, monitoring systems, corrosion protection, containment devices, and ancillary systems which, if installed incorrectly, could cause or delay detection of a leak. Tank installation specifically includes excavation, equipment placement, backfilling, piping, electrical work, testing calibration, and start-up. Tank installation also includes installation of the appropriate equipment to meet National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements (40 CFR § 63.6580, Subpart ZZZZ), including submerged fill and vapor balance systems (Stage 1 vapor recovery) and the testing of those systems. Installers shall have on their person at all times while on a UST job site a 40-hour general site worker program identification card or any valid refresher card that complies with OSHA standards.

134.24(4) Documentation of work performed. Installing a new UST system or upgrading

a UST system requires an installer to submit a copy of DNR Form 148, signed by the owner, to the department. Each licensed installer responsible for the new system installation or the upgrading of an existing system shall sign DNR Form 148 as required by 567—paragraph 135.3(3)“e.”

567—134.25(455B) Testers. A tester of underground storage tank systems shall apply for licensing as a tester and note on the license application the systems and method(s) of testing the tester will use. In addition to the licensing requirements listed under rule 134.19(455B), a tester shall provide documentation of at least two years of relevant experience, documentation of manufacturer certification for past testing, and proof of current certification for future work.

134.25(1) Renewal qualifications. To be eligible for license renewal, a tester shall fulfill the department’s continuing education requirements in rule 134.19(455B) and shall maintain manufacturer certification or notify the department within 30 days if the certification is lost.

134.25(2) Documentation of work performed. A copy of the test results shall be attached to DNR Form 148 when testing is done in connection with a new installation or the upgrading of an existing underground storage tank system. A precision test is required when the system is covered and is ready to be placed into service; a volumetric, nonvolumetric, or vacuum test may be used as a method for testing the system and a hydrostatic pressure test may be used for testing the lines. Systems used for leak detection or monitoring (such as statistical inventory reconciliation, vapor or water monitoring wells, or tracer-type tests) shall not be acceptable as a precision test at the completion of the installation of a new system or the upgrading of an existing system. Automatic in-tank gauging may be acceptable if third-party U.S. EPA approval as a precision test has been received for testing tanks.

a. The test results shall identify the tanks tested, the test method employed, and the results of the test. Test results shall be dated and signed by the licensed tester who performed the tests.

b. The original DNR Form 148 without attachments shall be mailed to the department.

134.25(3) Exception to inspection requirement. Installation inspectors are not required for the testing of underground storage tank systems, lines, leak detection, and cathodic protection as required by 567—Chapter 135 after the system has been put into service.

567—134.26(455B) Liners. In addition to the licensing requirements listed under rule 134.19(455B), a liner shall provide documentation of at least two years of relevant experience, provide documentation of manufacturer certification for past linings and proof of current certification for future work, and have completed at least 40 hours of OSHA training.

134.26(1) Renewal qualifications. To be eligible for license renewal, a liner shall:

- a. Fulfill the department’s continuing education requirements in rule 134.19(455B);
- b. Maintain manufacturer certification and immediately notify the department if the certification is lost; and
- c. Complete the annual eight-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) refresher course.

134.26(2) Lining system investigation and installation requirements.

a. Inspection of internal lining. A steel underground storage tank that satisfies the corrosion protection requirement as set forth in 567—subparagraph 135.3(2)“b”(1) by the addition of an internal lining shall be internally inspected within ten years of the date the tank was lined and every five years thereafter. The purpose of the inspection is to determine if the lining continues to perform according to the manufacturer’s specifications, state and federal rules, and national standards and codes and to determine if the tank is still structurally sound. The department accepts both manned entry and video camera periodic inspections. The lining method employed must be specifically designed for the purpose, be compatible with the product stored, and meet acceptable federal and state standards as set forth in 567—Chapter 135.

b. Integrity testing for tanks. Liners shall verify structural integrity, to include thickness

and strength of the underground storage tanks, whenever tanks are physically entered (manned entry) for periodic inspections. The following standards must be used for lining and periodic inspections and integrity testing:

(1) Physical (manned entry) inspection. American Petroleum Institute (API) Standard 1631: Interior Lining and Periodic Inspection of Underground Storage Tanks.

(2) Video camera inspection. API Standard 1631; “Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera” developed by Ken Wilcox Associates Inc.(KWA), Methods A and C; and ASTM G-158 (approved prediction models).

(3) Repairs to lining. Standard 631 of the National Leak Prevention Association (NLPA): Entry, Cleaning, Interior Inspection, Repair and Lining of Underground Storage Tanks. Repaired lining must meet the requirements of API 1631 § 8.

(4) Documentation of the inspection. API 1631—Form C: Tank Re-Inspection Affidavit. Liners shall document any defects noted in the system including, but not limited to, holes and perforations using API 1631—Form C: Tank Re-Inspection Affidavit and shall include photographs of all methods of repair.

134.26(3) Responsibilities of liners. While on UST job sites, liners shall have on their person at all times a 40-hour general site worker program identification card or any valid refresher card that complies with OSHA standards.

134.26(4) Documentation of work performed. A liner shall submit the API 1631 report form to the department, certifying that all work was performed in accordance with applicable industry standards.

567—134.27(455B) Installation inspectors. In addition to the licensing requirements listed under rule 134.19(455B), an installation inspector shall provide documentation of at least one year of experience with underground storage installations, testing, inspecting, or design; documentation of manufacturer certification for past work; and proof of current certification for

future work. An engineer who intends to apply for licensure as an installation inspector and who has met the requirements in Iowa to be a registered professional engineer (P.E.) may be exempt from the educational requirement so long as UST installation is in the scope of the engineer's P.E. license and regular practice as provided for in rule 134.19(455B). Engineers, however, are not exempt from fulfilling the examination requirement.

134.27(1) Renewal qualifications. To be eligible for license renewal, an installation inspector shall fulfill the department's continuing education requirements in rule 134.19(455B) and shall maintain manufacturer certification or notify the department within 30 days if the certification is lost.

134.27(2) Documentation of work performed.

a. A copy of the inspection report must be submitted within 14 days after the inspection is complete. Both the inspection form and DNR Form 148 must be received by the department before the UST system can be activated.

b. A licensed installation inspector shall inspect the job site a minimum of three times during the course of the new tank installation or system upgrade.

c. For new installations, the first inspection shall occur before the UST system is installed. The second inspection shall occur before the covering of the system, when all tanks and pipes are exposed. The inspector shall witness testing of the primary and secondary piping and testing of the secondary containment, including sumps, under-dispenser containment (UDC), and secondary containment leak detection equipment. The final inspection shall occur when all components are operational and the system has been covered, but before actual operation. The installation inspector shall be present on site, shall visually observe all inspections, and shall be able to attest to the results. A video or other recording device showing the work completed by the installer shall not be used nor shall it be an acceptable method of providing independent inspection of the work completed.

134.27(3) Inspection required. When concrete is cut or excavation is required that could

affect the integrity or operation of the UST system or when a component that routinely contains product is installed, replaced or repaired, one inspection is required. This inspection shall occur when the component is uncovered and replaced or repaired but before operation recommences. Whenever secondary containment, such as UDC or sump, is installed, at least one inspection is required after the equipment is installed and before the system is backfilled.

134.27(4) Inspection not required. Replacing, repairing or installing the following does not require an inspection: drop tubes, overfill devices, spill buckets, installation of ATG systems, dispensers, submersible turbine pumps, automatic line leak detectors, internal lining and periodic inspections or lining repair, cathodic protection systems, interstitial sensors, flex connectors, and line and tank tightness testing.

134.27(5) Pre-work notification requirement.

a. A licensed company/individual hired by an owner/operator to perform work shall notify the owner's/operator's licensed installation inspector of choice prior to commencing work. Additionally, the owner/operator is responsible for supplying the name of the installation inspector if it is not a governmental entity to any state or local agency with rules affecting installations or upgrades.

b. The pre-work notice given to the installation inspector shall include, at a minimum, the following information:

- (1) Description of the work planned.
- (2) The licensed individual responsible for the work to be performed.
- (3) A schedule of the work to be performed.
- (4) A copy of the UST notification of intent to install form submitted to the department.

c. The installation inspector shall review the work plan, and any required changes by the installation inspector must be submitted to the company/individual prior to the beginning of the described work. An inspection schedule must be agreed upon before work commences. Changes to the work schedule, to include the inspection schedule, because of weather or unforeseen job-

site conditions shall be agreed upon as soon as the extenuating circumstances are recognized.

134.27(6) Pre-installation and installation checklists.

a. The licensed company/individual performing the work shall submit to both the installation inspector and the department a notification of intent to install form 30 days prior to an installation or upgrade.

b. Installation inspectors are required to use the department's installation inspection checklist. The installation inspection checklist must be submitted within 14 days following the tank installation inspection.

134.27(7) Conflict of interest. In addition to the conflict-of-interest provisions outlined in rule 134.21(455B), the following apply to installation inspectors:

a. If the installation inspector establishes a contract to perform inspection services for an owner/ operator, or performs more than five inspections per calendar year for any one owner/operator, then the installation inspector is required to disclose that relationship in writing to the department within 30 days of the fifth inspection.

b. The department may require the owner/operator to seek alternative inspection services for any reason deemed prudent to ensure quality installations.

134.27(8) Miscellaneous requirements. An installation inspector has the right to postpone work or to stop work on a job if standards as outlined in Part C of this chapter are not followed by the installer. Furthermore, once an installation inspector has been placed on a job, that installation inspector cannot be replaced without the department's approval. Installation inspectors must verify that any local permit and notice requirements are in place.

567—134.28(455B) Removers. In addition to the licensing requirements listed under rule 134.19(455B), a remover shall provide documentation of at least two years of removal or other relevant experience and complete at least 40 hours of OSHA training. An engineer who intends to apply for licensure as a remover and who has met the requirements in Iowa to be a registered

professional engineer (P.E.) may be exempt from the licensure requirements under rule 134.19(455B) so long as UST-related work is within the scope of the engineer's P.E. license and regular practice. Engineers are not exempt from fulfilling the examination requirement in subrule 134.19(6).

134.28(1) Renewal qualifications. To be eligible for license renewal, a remover shall:

- a. Fulfill the department's continuing education requirements in rule 134.19(455B);
- b. Comply with all local permitting and notice requirements;
- c. Comply with department-issued UST closure guidance; and
- d. Complete the annual eight-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) refresher course.

134.28(2) Responsibilities and documentation of work performed. A licensed remover shall be on site during the performance of all UST closure-related work, including subcontracted work, for which the owner/operator has contracted to have completed by the remover. Removers are responsible for ensuring that all work performed complies with the safety requirements of OSHA. Removers shall submit to the department a notification of closure form 30 days prior to the scheduled removal or fill in place as required in 567—subrule 135.15(2). Removers shall submit to the department the closure report within 45 days of removal or fill in place as required in 567—paragraph 135.15(3)“e.” Removers shall ensure that all local permits and notice requirements are satisfied. Removers shall have on their person at all times while on a UST job site a 40-hour general site worker program identification card or any valid refresher card that complies with OSHA standards. The closure investigation required by 567–135.15(3) may be conducted by a licensed remover if the remover is a certified groundwater professional licensed under Part A of this chapter. If the remover is not a certified groundwater professional, the remover may subcontract with a certified groundwater professional.

567—134.29(455B) Disciplinary actions.

134.29(1) General policy. It is the policy of the department to enforce standards of professional and ethical conduct which are generally accepted within the professions which qualify a person for licensure in Iowa under Part C of this chapter. The department intends to investigate and enforce standards of conduct by a licensee which fall within the scope of the licensee's professional relationship with the department, the licensee's clients, and other state regulatory agencies. The department may impose disciplinary actions which may include, but are not limited to, notice of deficiency; probationary notices; and suspension, revocation, and denial of a license. The criteria identified in subrules 134.20(1) and 134.20(2) will be utilized by the department in deciding whether to issue an initial license or to renew a previously issued license.

134.29(2) Notice of deficiency or probation. A notice of deficiency or probationary notice shall not be an appealable decision. The recipient of a notice may contest the basis for the notice in writing, and such response shall be made part of the licensee's record. A person subject to a notice to suspend or revoke a license may appeal the notice as provided in 567—Chapter 7.

134.29(3) Suspension.

a. The department may suspend the license of any individual or company for good cause for either a single act or omission or repeated acts or omissions. The suspension of a company or individual licensee shall prevent the company or individual licensee from engaging in activities for which the license is required. The suspension may require the licensee to take remedial measures intended to correct or prevent future acts or omissions. Good cause includes, but is not limited to:

- (1) A violation of these rules.
- (2) Negligent misrepresentation of material facts in a report submitted to the department.
- (3) Incompetence on the part of the licensee as evidenced by errors in the performance of duties and activities for which the license was issued.
- (4) Repeated failure to submit reports of activities to the department or the

owner/operator as provided in this chapter.

b. The department may require that the licensee complete a special training program, examination, or other remedial measures sponsored or approved by the department and designed to strengthen the specific weakness in the licensee's performance of duties as identified in the suspension order.

c. A licensed company or individual shall immediately surrender the applicable license to the department as of the effective date of a suspension order. The department may reinstate the license if it is determined that the company or individual has satisfied the terms of the suspension order and the license is not expired.

134.29(4) Revocation.

a. The department may revoke the license of a company or individual for one or more of the following:

(1) Willful disregard of, or willful or repeated violations of, this chapter or 567—Chapter 135.

(2) Fraudulent omissions or misstatements of material facts in a report or in other written or oral communications with the department.

(3) A knowing and willful failure to detect and report a material violation of UST operation and maintenance standards.

(4) Acts or omissions warranting suspension after a license was previously suspended.

b. A licensee shall immediately surrender the license after the effective date of the revocation decision.

Date

Richard A. Leopold, Director

(P:134f.doc/mg)

Iowa Department of Natural Resources
Underground Storage Tank Section

Responsiveness Summary - April 2009
Notice of Intended Action, ARC 7624B,
Proposed amendments to 567--Chapter 134C IAC and 567 – Chapter 135:

Underground Storage Tank Licensing and Certification Programs
Technical Standards and Corrective Action Requirements for Owners and Operators of
Underground Storage Tanks

Comments were received from the following:

- Gaylen Hiesterman, Office Manager, CGWP, Tetra Tech, Waterloo
- Jeff Hove, Petroleum Marketers and Convenience Stores of Iowa (PMCI), Urbandale
- Christy Jaworski, CGWP, Barker, Lemar Engineering, West Des Moines

Comment 1.

Written comment from Gaylen Hiesterman, Wednesday April 8, 2009, 10:21 AM

Regarding the language in 567-134.22(455B) Duty to report it is the intent to have any UST Professional, including the certified groundwater professionals, to report suspected and confirmed releases to the owner/operator and to the department but per Chapter 131 - Notification of Hazardous Conditions, in 567-131.2(455B), the person reporting to the department is directly associated with the hazardous condition through the manufacture, storage, handling, transporting or disposing of that product. By this definition a certified groundwater professional would not be responsible for reporting to the department. **Thus I believe similar language is called for in Chapter 134 so department rules do not contradict one another.** I agree that certain UST Professionals (installers, testers and removers) would have more direct involvement with the storage, handling and disposal of petroleum products and thus would be held accountable under either Chapter 131 or Chapter 134.

In addition, the same section referenced above in Chapter 134 does not specify a timeframe for reporting. Again in Chapter 131, in 567-131.2(455B), there is a specified timeframe for department notification through verbal reporting and a written report. Thus I believe similar language is called for in Chapter 134.

Department's Response to Comment 1.

The duty to report a "hazardous condition" under chapter 567 IAC 131 comes from the language in Iowa Code section 455B.386 and applies to a defined class of persons "...manufacturing, storing, handling, transporting, or disposing of a hazardous substance." The UST rules in 567 IAC 135.6 require owners and operators to report a "hazardous condition" but also expand the duty of owners and operators of USTs to report "suspected" and "confirmed" releases. It is the intent of the Department to place some responsibility on UST professionals to directly report a "hazardous condition" or a "confirmed" release and in doing, the policy may be expanding the duty to report beyond those required under Iowa Code section 455B.381 and agency rules in chapter 567 IAC 131.

The Department recognizes that currently the licensing rules applicable to certified groundwater professionals in 567 IAC 134, Part A would appear to only require the groundwater professional to report a suspected or confirmed release or hazardous condition the person "reasonably believed" to be responsible for reporting to the Department. See 567 IAC 134.4(3). Similarly, the licensing rules applicable to compliance inspectors, 567 IAC 134.14(1)"b" only require the inspector to notify the UST owner and operator of a suspected or confirmed release or hazardous condition.

The Department intends to revisit the reporting requirements applicable to certified groundwater professionals and compliance inspectors to make them consistent with the reporting requirements adopted in this final rule. See the response to comments below for more explanation on the final rule applicable to the duty to report.

Comment 2.

Written comment from Christy Jaworski, April 8, 2009

Dear Mr. Collins:

I am responding to proposed changes to Chapter 134 as a Certified Groundwater Professional. I am specifically concerned with the proposed change that requires a Duty to report. The proposed rule states that it is the Professional's responsibility to report "suspected" or confirmed releases. I have several concerns about this section.

1. I believe it should be the owner's responsibility to report. I believe it is the professional's duty to notify the owner of the suspected or confirmed release and to notify them of what steps they are required to take. I do not believe it should be the professional's responsibility to notify the IDNR as this poses a conflict for the professional with the client. The professional is conducting work as a client's representative, and the professional's role is not a regulatory arm or enforcement arm. I believe the IDNR has mechanisms in place currently to address owners

that do not report releases, and that transferring this responsibility to the professional is not the proper way to address non-reporting concerns.

2. I believe this change poses liability concerns for the professional, especially in the case of “suspected” releases. If the professional reports a suspected release to the IDNR, which triggers a site check (which typically costs several thousand dollars), and it turns out there is no release and a lawyer disagrees with what was reported as “suspected,” it is likely the owner will require the professional to cover the cost of the site check, or at the very minimum not pay the current fees they may owe.
3. Other areas of code including Section 311/312, only requires law enforcement and the responsible party to report a hazardous condition. Below is an excerpt from the IDNR webpage:

“Who is required to report a hazardous condition?

Law enforcement officers and the responsible party. See the rules for a complete definition of responsible party. Fire departments, mayors, and county coordinators are not required to report a hazardous condition. However, we always welcome a report or notification from any local official.” Reference: <http://www.iowadnr.gov/epcra/faq.html>

It does not seem appropriate that reporting a petroleum release has more stringent requirements than other types of hazardous release reporting requirements.

Department’s Response to Comment 2.

1. As stated in comment #1, the department believes licensed UST professionals are performing a regulatory function whether they are tank installers, installer inspectors, testers or removers. Therefore, they should have some duty to report UST releases. The Department has broad authority to determine the responsibilities of licensed UST professionals.

The mechanisms the department currently has in place are not working well. Suspected and confirmed releases are not being reported (or not reported in a timely manner) for a number of reasons: owners may be fearful about reporting a release; owners want to avoid paying a \$10,000 deductible on their pollution liability insurance; owners are not aware of what a release is; and owners do not often open the covers, manways and lids where they would find a release or attend to leak detection monitoring equipment, which indicate a release has occurred. UST professionals know where leaks occur and how they occur. They are often the first to find them.

The Department's objective is to improve reporting of suspected and confirmed releases by placing some responsibility on those professionals who are in a position to make these observations as part of their professional duties.

In working through this issue with stakeholders, the department believes it has come up with a fair and balanced approach that meets concerns of UST professionals. The final rule places a responsibility on UST professionals to report a suspected or confirmed release or a hazardous condition to the UST owner/operator on a form developed by the Department. Suspected or confirmed releases must be reported to the owner/operator within 24 hours and hazardous conditions within 6 hours. The form will provide language to the owner/operator explaining their duty to report the condition to the Department and take necessary response actions. The UST professional has a duty to report only confirmed releases or a hazardous condition by sending the reporting form to the Department after 7 days. The Department is not requiring the UST professional to report a "suspected" release to the Department. The Department has also prepared further guidance to the public as to what conditions might constitute a reportable "suspected" or "confirmed" release and what conditions might constitute a reportable "hazardous condition."

2. The department's final rule requires the UST professional licensed under Part C to report only confirmed releases and hazardous conditions to the department after 7 days. The policy of using a reporting form that the UST professional must sign and provide the owner/operator is intended to improve the reporting by owner/operators while still placing some limited duty on licensed UST professionals. The UST professional is making a professional judgment by reporting suspected releases to the owner/operator of the UST site and instructing the owner/operator as to what measures should be taken to confirm a suspected release or respond to a confirmed release. The UST professional must sign the department release form acknowledging the release was reported to the owner/operator with instructions within 24 hours or 6 hours if a hazardous condition exists.

The department has provided guidance to UST professionals and owners/operators further explaining the conditions that might constitute a suspected and confirmed release which has been posted on the UST Section website. There should be little confusion about identifying and reporting a confirmed release. Steps must be taken to investigate a suspected release, but they do not necessarily involve invasive sampling or a site check in every case. The department will be responsible for ultimately deciding what investigatory and response actions are required, not the UST professional.

The department is not aware of significant liability issues for UST professionals regarding reporting of confirmed release or hazardous conditions in other states that require direct reporting to the regulatory agency. The results of a survey conducted by the UST Section that went out to all states did not mention liability problems for those states that require UST professionals to report confirmed releases. Twelve states require the owner and operator, the UST professionals and any person with

knowledge to report suspected and confirmed releases. The department also contacted the insurance company that insures many of UST professionals in the country (Monroe & Monroe) who stated that a duty to report for UST professionals would not likely raise insurance rates.

Furthermore, it is not likely the UST professional will be held responsible for response actions that the Department requires the owner/operator to undertake. Upon receipt of a report of a confirmed release or hazardous condition, it is the Department, not the UST professional, who makes the decisions as to what confirmatory steps or other investigative or response action might be required. The simple reporting of a condition by the UST professional, who is following licensing rules applicable to them, would not likely be considered the proximate cause of the Department's follow up actions if the response action for some reasons were considered to be unjustified.

As stated above, the Department believes licensed professionals are performing a regulatory function and should have some limited duty to report confirmed releases and hazardous conditions.

Comment 3.

The following comment from the public hearing on April 2, 2009, regarding the duty to report, is summarized below:

Jeff Hove, Petroleum Marketing Convenience Stores of Iowa (PMCI), Urbandale Iowa.

PMCI is most concerned with the language in 134.22, where duty to report includes both suspected, as well as confirmed releases. Mr. Hove indicated reporting suspected releases could create an onerous situation. Between \$5,000 and \$7,000 could be spent on assessment, as required by the DNR to confirm whether there was a release. If the assessment shows a release did not occur, Mr. Hove believed this could turn into a conflict to be settled by attorneys. PMCI recommends dropping duty to report suspected releases.

Mr. Hove also emphasized preserving the vital working relationship between owner/operator and their contractor. He recommended keeping the current process, whereby the UST professional reports a release to the owner/operator advising them how to proceed. Mr. Hove believed this was in keeping with what other states require, and further it would prevent the anticipated, and unwanted legal battles should UST professionals be required to report releases.

Department's Response to Comment 3: Please refer to responses to comments 1 and 2.
Comment 4.

Jeff Hove with PMCI made the comment objecting to the requirement that the licensed UST remover could only take the soil and groundwater sampling required by the Department's UST permanent closure rules if the remover was also a certified

groundwater professional (CGWP). The commenter felt the remover's licensing requirements should be sufficient to allow them to conduct the closure investigation.

Department's Response to Comment 4.

Currently, the Department's UST closure investigation rules applicable to owners/operators do not specify that soil and groundwater sampling be conducted by a certified groundwater professional. This remover rule, 134.28(2) only says that the remover cannot perform this function unless they are a certified groundwater professional or they contract with a certified groundwater professional. The Department intends to initiate rulemaking to amend the UST closure investigation rule at 567 IAC 135.15(3) to require the closer investigation to be performed by a certified groundwater professional unless the Department in its discretion approves an alternative.

The Department believes that after almost 20 years of regulating the permanent closure of USTS, it is time to assure more reliable soil and groundwater testing as part of the closure process. The number of tank removals compared to the 1990s is much more limited which provides the opportunity to use existing certified groundwater professionals for this function. A remover is licensed in the procedures for preparing a tank for removal, including the industry standards for worker and public safety. The licensing qualifications for removing or filing a tank are not sufficient to assure the necessary expertise and experience to reliably conduct soil and groundwater testing.

Currently, for the majority of tank closures, soil and groundwater sampling is performed by CGWPs, therefore, this is already standard practice. CGWPs are already trained in screening samples and in where to collect samples for tank removal. In addition, if a site is an existing LUST site they can make determinations as to whether further assessment work is needed. Licensed removers would require additional training to be able to identify sample locations, conduct screening, collect and preserve samples for shipment.