MINUTES
IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND PROGRAM

February 29, 2008

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

Angela Burke-Boston, chairing for the absent Susan Voss, called the Iowa UST Board meeting to order at 10:06 A.M. A quorum was present. Roll call was taken with the following Board members present:

Jacqueline Johnson (via telephone)
Nancy Lincoln
Liz Christiansen (for Richard Leopold)
Stephen Larson (for Michael Fitzgerald)
Jim Holcomb
Jeff Robinson

Also present were:

David Steward, Attorney General's Office
Scott Scheidel, Program Administrator
James Gastineau, Program Administrator's Office
Elaine Douskey, Iowa Department of Natural Resources
Brian Tormey, Iowa Department of Natural Resources
Dave Wornson, Iowa Department of Natural Resources

APPROVAL OF PRIOR BOARD MINUTES

The minutes from the January 25, 2008 Board meeting were reviewed. Ms. Christiansen moved to approve the minutes, Mr. Holcomb seconded the motion, and by a vote of 5-0, the minutes were approved.

CLOSED SESSION

Ms. Burke-Boston noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21.

PUBLIC COMMENT

Ms. Burke-Boston requested any comments from the public present. There were no public comments made at this time.

BOARD ISSUES

A. Legislative Update

Mr. Scheidel discussed the activities at the State Capitol. He noted the following bills had been very recently introduced and he provided copies of each to Board members:

1) House Study Bill (HSB) 714

The main intent of this bill was to constitutionally protect monies collected for road use. The drafted bill created two problems for the Iowa UST Fund. First, the change would allow for the environmental protection charge (EPC) collections to be deposited directly into the Iowa UST Fund. This would violate the state Constitution because the EPC is a gas tax required to be used for road use. Second, the drafted bill would change the pool of money from which the Iowa UST Fund is paid, altering the security behind the bonds issued by the Board. The change in security could create dissatisfied bondholders, change the rating of the bonds, and changes in the secondary market and lawsuits may result. These problems were discussed with subcommittee members, and Mr. Scheidel stated he was directed to find solutions, because the bill was a priority and the subcommittee planned to push forward with it. Mr. Robinson had suggested that the bond repayment balance be saved in an escrow account, so that bondholders would be assured their stream of bond repayments would continue on schedule. Board members were given a copy of the bond repayment schedule for review. The remaining balance of bond repayments was $36,285,471.89. Mr. Scheidel inquired if the Board would be agreeable to setting up an escrow account for the bonds. Then a few changes to the wording of the bill and continuing to deposit the EPC collections into the road use fund would resolve the constitutionality issue.

Mr. Larson inquired about how to set up the escrow account. He noted that a change in the bond covenant of a debt after that debt is issued to the State of Iowa could affect the State's credit rating on future issuances. He stated such an effect is a possibility. Mr. Scheidel confirmed that he would involve Mr. Larson in the process to protect the State from such effects. No other concerns from Board members were noted.

2) HSB 746/Senate Study Bill (SSB) 3198

Mr. Scheidel stated these bills would make several changes to the renewable fuel infrastructure laws, including the Renewable Fuels Infrastructure Board (RFIB). The change that would affect the Board in both of these bills was the removal of the UST Fund Board's authority to require that applications to the RFIB be forwarded to the UST Fund Board for review and recommendation. He reminded the Board that the RFIB's grant program had been partially funded with Iowa UST Fund appropriations. Also, he noted that the Board had not used their authority of oversight to review applications to date. Mr. Holcomb asked if Mr. Scheidel had a recommendation. Mr. Scheidel stated that having the authority wouldn't hurt, and he also

mentioned that Board member Doug Beech, who was not in attendance, had expressed his opinion that the Board should try to maintain its authority based on the Board's funding ($7M) of the grant program. The Board agreed with Mr. Beech's comment, and Mr. Scheidel noted that he would register against the bills on behalf of the Board for that reason.

Ms. Christiansen inquired if anyone at the Capitol had indicated an interest in appropriating funds from the Iowa UST Fund. Mr. Scheidel responded that those interests were rarely indicated early on during Session.

B. <u>Loss Portfolio Transfer Discussion - RFI</u>

Mr. Scheidel presented to the Board a draft request for information (RFI) on a loss portfolio transfer (LPT) for the Board. He explained that the draft laid out the Board's goals for seeking information, that they may or may not use, to issue a request for proposal (RFP) or negotiate with interested parties and defines the Board's basic parameters under an RFI. The draft also included sample documents, similar to what had been used in the previous LPT. Mr. Scheidel allowed the Board to discuss the draft and the timeline for the RFI and where they would like post it. He noted that Doug Beech had submitted comment on the draft previously saying that he had concerns about stretching out the timeline just long enough so that interested parties would have sufficient time to acquaint themselves with the UST Program. He also had suggested that if the Board did enter into a new LPT, there should be some agreement in the negotiations that an attempt would not be made to circumvent the process either through the Iowa Legislature or the Administrative Rules process.

Mr. Holcomb expressed that he liked the idea of the RFI. Mr. Larson suggested that once the RFI is issued, the Board should allow three weeks generally for questions from interested parties, then an additional two weeks for the Board to answer those questions, another week for vendor responses, with another two weeks for scheduling and receiving presentations to the Board. Mr. Steward noted that information about the UST Program would have to be available to vendors for review during the RFI process.

Mr. Scheidel asked Board members where they would like the RFI to be posted. He suggested Business Insurance or National Underwriter publications to reach the insurance industry, as well as, environmental trade organization publications. Mr. Holcomb suggested that Mr. Scheidel select the publications and gather information from those to estimate a date of issuance for the RFI. Mr. Scheidel agreed.

Mr. Larson noted that the language in section 1.2 of the draft "negotiate with" was a concern, and Mr. Scheidel stated he would remove that phrase.

C. <u>UST Removal Rule Status</u>

Mr. Scheidel presented a copy of the Notice regarding the removal of underground storage tanks (UST's), which was noticed to the Administrative Rules Review Committee previously for publication March 4, 2008. Also, he included in the Board packet a copy of the same rule, before the noticed changes were requested, that is being used currently. Lastly, he included a

table explaining the differences between the old and new rule language. He noted that one change would allow the current claimant at a site to be eligible for UST removal if ever an eligible claim had been filed, rather than restricting UST removal eligibility to those who had never lost UST Fund eligibility due to a lapse in the financial responsibility of a claim or for any other reason. He noted the work deadline for UST removal remained the same as "after July 1, 2007." He explained that the cost control of any UST removal must have pre-approval in both versions of the rule, but the new rule added a cap to the costs not to exceed what would be incurred using any Board-contracted vendor that may be in place. He also explained that the claimant for UST removal benefits must be the same as the UST owner in the current rule, which had proved problematic; therefore the proposed rule allows the UST owner to be reimbursed after the invoices for UST removal have been paid and written consent from both parties for the work completed and claimed has been secured.

Lastly, Mr. Scheidel explained that the current rule did not reference ineligible sites. The proposed rule would allow for the Board to contract for the removal of UST's at ineligible sites, with the option to enforce cost recovery. He noted this practice was already available under the current closure contract special project claims pursuant to a 28E agreement with the DNR.

D. <u>SIC Model (RBCA) Rule Status</u>

Mr. Scheidel explained that the DNR had noticed their rule regarding the change to the risk based corrective action (RBCA) model to the Administrative Rules Review Committee, and he reminded the Board of previous discussions explaining that many stakeholders and member of the software investigation committee (SIC) were unhappy with all of the language in the proposed rule. He stated the DNR was accepting public comment at three meetings to be held the following week in different regions of the state, and the Administrative Rules Committee hearing was to be held the following Friday. After meeting with SIC members, he explained that he would attend those public meetings to offer comments requesting that only SIC recommendations be included in the rule, and the additional blanket authority to require a Tier III assessment at sites with public water supplies. He requested Board direction to modify or clarify its position regarding comment.

After reviewing the creation and purpose of the SIC, as well as, the history of the DNR-drafted administrative rule through the ARC process, Ms. Christiansen asked Mr. Scheidel about the effect of the DNR-drafted rule on the Iowa UST Board. He explained that the DNR currently had exception authority to require additional assessment, including Tier III reports, at a leaking underground storage tank (LUST) site. And he stated the new rule would make these additional assessments the rule rather than the exception due to the fact that most open LUST sites would fall into that category. The actual cost to the Board would be dependant upon how the DNR project manager chooses to implement the rule, as due diligence for evidencing the need for further assessment would no longer be required. Mr. Scheidel estimated that the Board would pay additional tens of thousands of dollars per LUST site required to complete the additional assessment. He couldn't say how much in total, as it could range from hundreds of thousands to millions of dollars of total impact to the Board. Additionally, he stated he felt that the old RBCA model, which had proved to be more than 8 times over-predictive of modeled contaminant

plumes since 1995, surely cost the Board millions of dollars since it had never been calibrated since its inception.

Dave Wornson, DNR Legal Counsel, addressed the Board stating that the 1995 rule regarding RBCA had recognized that the RBCA model did not address the vertical component of petroleum contamination, most especially in regard to water supply well receptors. To that end the 1995 rule had given groundwater professional consulting firms the expressed authority to complete additional assessment activities (i.e. RBCA Tier III) at a LUST site, if they felt the current RBCA model had not captured the risk to a vertical component receptor. There was no expressed authority in the rule to allow DNR staff to require the completion of the additional assessment. Therefore, Mr. Wornson explained that the intent of the proposed rule was to give DNR discretion to exercise on a case-by-case basis its authority to require additional assessment where it considers the current model to fall short of addressing a pumping water well receptor. He stated that Mr. Scheidel's statement that the proposed rule changes DNR's authority from exception authority to the rule was not true. Also, he explained that the stakeholders agreed to use the new RBCA model for all pathways and groundwater ingestion pathways for all receptors except the public water wells that fell into the definition of a sensitive area in the rule. And the old RBCA model was to be used for those specific water well receptors; therefore he stated that Mr. Scheidel's statement that the old RBCA model had resulted in millions of excess dollars from the Board was unfair. He said that site owners had always been allowed to use the Tier III option to disprove the old RBCA model to DNR, which would prevent the expense of millions of dollars of corrective action.

Mr. Scheidel agreed that the option of a Tier III had prevented the greater expense of corrective action at a site that had been assessed under the 8-times over-predictive model, however the proposed model was only 2-3 times over-predictive, and that in itself would prevent the greater expense of unnecessary corrective action. The proposed rule added a new expense of Tier III to a large number of open LUST sites thus adding back in a burden on the claimant to prove that a water supply well receptor outside of the simulated plume is not at risk. Also, the proposed rule pulls back into play the 8-times over-predictive model in those cases, therefore adding back in the greater expense of corrective action that may not be necessary. He discussed DNR's reference to "high-volume pumping [water] wells" as receptors, however stated the blanket authority in the rule could apply to any public water supply well regardless of the volume pumped.

Mr. Wornson stated that DNR used the term public wells in the rule because they could use their "source water data" to roughly define the potential impact on public water wells, and he felt it made sense to use that data to evaluate a well. Based on that data, the DNR felt they should have the authority to challenge the RBCA model, when they feel it is under-predictive of the simulated plume with regard to a public water well and require a Tier III. Currently, he said the groundwater professional can challenge the model, if he feels it is being over-predictive and prove it with a Tier III. He explained that this had been a problem, which could be fixed by the language in the current rule by allowing DNR authority to go with a Tier III. And he stated DNR was considering adding guidelines to the rule to outline when DNR staff would exercise their authority to require a Tier III.

Ms. Burke-Boston noted the comments that Mr. Scheidel planned to issue at the upcoming public meetings, as a SIC member, and asked the Board members if they had additional or alternative directives for him on this issue.

Mr. Steward offered to the Board that he heard both parties indicating the same intentions for the rule – that the Tier III option would be an exception rather than the rule; however Mr. Scheidel stated that the way the rule was written the opposite was indicated. Ms. Christiansen pushed for compromise because both entities have the same ultimate goals. Mr. Wornson stated that the DNR and the Board had common objectives and must work together by statute to meet those objectives, however he said that the Board was not a regulatory body and it should consider a limit on taking a public position on regulatory matters. But since the Board was the funding mechanism to ensure compliance with those regulations, Board members indicated they had cause to discuss it. Mr. Wornson continued to emphasize that the proposed rule would not cost the Board more, and would in many cases maintain the status quo. Mr. Scheidel noted that the status quo was the reason for the creation of the SIC and the commissioning of LaDon Jones to recalibrate the model to save the Board some expense into the future.

Mr. Wornson discussed the risk from sites calibrated under the new model, as 3-times over-predictive was only an average, and some sites' assessments might not model a large enough plume. Mr. Scheidel agreed stating that there would always be exceptions, and he had always supported DNR exception authority. He noted that the new model was calibrated with 95% confidence that sites would be accurately assessed, and the new rule simply applied the basis for additional assessment of the remaining 5% over the whole.

After additional discussion, Elaine Douskey of DNR questioned the Board's mission. She noted that DNR's Water Supply Department had reports of over 1,400 water supply well samples with BTEX hits. With 6,000 LUST sites in Iowa and BTEX being a component of gasoline, it would seem prudent that DNR should react in such a way as to prevent future contamination in water wells. She explained that the SIC recommended a change to the RBCA model, and that change was included in the rule. She added that the number of stakeholders in this issue had grown to include water supply companies and municipalities. To incorporate the interests of all the additional language with regard to public water supply receptors was added to the rule. At the last stakeholder meeting, she had the impression that all were in agreement to the compromise.

Mr. Steward pointed out to the Board members the language within the rule (handed out at the meeting), which was under discussion involved Item 1, defining "sensitive area" and Item 4.b. discussing receptor evaluation. He noted the language under receptor evaluation stated that sites with certain conditions had to be evaluated under the old RBCA model, indicating that the procedure was the rule rather than a discretionary directive. Also, he explained that Item 2 stated that if DNR staff felt that a site had not been sufficiently assessed by the RBCA model, they could require a RBCA Tier III.

Mr. Scheidel pointed out that the language indicated that DNR could require a Tier III without substantiating the reasons why. He also noted that groundwater professionals were the scientists on-site for the evaluation, and they already had the authority to complete a Tier III if they felt a receptor was not properly addressed by the RBCA; therefore why not trust the scientists on-site?

Mr. Scheidel explained that DNR had every opportunity to challenge a groundwater professional's recommendation to complete or not to complete additional assessment, but they currently had to support their reasons for the exception, and the new rule would eliminate the "exception" element thus eliminating the reasoning.

Ms. Burke-Boston stated that Board members did not appear to be altogether comfortable with Mr. Scheidel making public comment at the ARC. Mr. Steward reminded the Board of Ms. Douskey's question regarding the Board's mission. He asked if it was its mission to spend money to protect the environment or was its mission to spend money wisely to protect the environment. Ms. Christiansen suggested the Board wait to see what additional terms the DNR might add to the rule to define how or when DNR would use their Tier III authority. Mr. Steward advised the Board that they could allow for comments at the ARC, if that was the will of the Board. And Mr. Scheidel offered to forward his public comments in writing to Board members electronically by the end of the day.

E. <u>DNR Update</u>

Elaine Douskey updated the Board that DNR had hired a new LUST section staff member to replace Karen Lodden. She also explained that the UST/LUST Section had been designated as part of the Land Quality Bureau now, with their Bureau Chief being Brian Tormey.

PROGRAM BILLINGS

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

1. Aon Risk Services.....$122,726.00
   Consulting Services – March 2008 ($57,513.00)
   Claims Processing Services – March 2008 ($55,213.00)

2. Attorney General's Office.....$9,896.22
   Services provided for January 2008

3. Nancy Lincoln.....$112.32
   Mileage reimbursement for travel from Glenwood to Des Moines
   For January 25, 2008 Board meeting

No additional billings for outside cost recovery counsel were presented by the Attorney General's office for this meeting. On a motion by Mr. Larson and a second by Mr. Holcomb, the billings were approved by a vote of 5-0.

MONTHLY ACTIVITY REPORT

Mr. Scheidel noted that the January activity report was in the Board packets for the Board members to review. He also stated that the Administrator's Office was trying to track how many sites were pending risk classification changes noting slower outflow of reports and fewer

corrective action meetings over the last several months. He wanted to track the corrective action meeting agreements to see if they had led to positive results in terms actual classification changes. Ms. Douskey mentioned that she had checked their list of corrective action sites and identified approximately 50 sites that required follow up with the groundwater professionals, and they hoped to prod those sites' activities along as a result.

ATTORNEY GENERAL'S REPORT

Mr. Steward stated he had nothing to report to the Board at this time.

CLAIM AUTHORITY

Mr. Gastineau presented the following claim authority requests:

1. Site Registration 8606584 – Casey's General Store, Creston

This site was high risk for a plastic water line for both groundwater and soil leaching pathways. The site was low risk for soil leaching to groundwater vapor and soil vapor. Mr. Gastineau stated that a budget for an excavation had been submitted, and the work was on hold pending decisions regarding the threat of poly-vinyl chloride (PVC) water lines as a receptor, as well as, pending decisions on when to close the store. Previous authority to $75,000 had been granted, and $32,457.63 was incurred to date. Additional authority to $150,000 was requested for a tank pull and upgrade and implementation of the excavation.

A motion to approve the claim authority was submitted by Ms. Christiansen and seconded by Ms. Lincoln. Approved 5-0.

2. Site Registration 8606630 – West Branch Oil Co., Inc., West Branch

This was the second Board report for this site, which was classified high risk for the groundwater to plastic water line pathway for two plastic water line receptors. The receptors were outside of the actual plume. Additional monitoring might clear the high risk pathway allowing site reclassification to no action required. Free product inspections were taking place, and it no free product would be observed through April 2008, all free product activities may cease. No free product had been observed since April 2006. Previous authority to $135,000 had been granted, and $145,934.02 was incurred to date. Additional authority to $185,000 was requested for a site monitoring report (SMR) and a free product recovery report (FPR).

Mr. Holcomb submitted a motion to approve the claim authority, and Ms. Christiansen seconded the motion. Approved 5-0.

3. Site Registration 8610198 – Koch's 66, Dike

This site was classified high risk for the groundwater ingestion pathway for four drinking water wells. The site was also low risk for the protected groundwater source pathway and potential enclosed space pathways. The site target levels were nearly met for the high risk pathways, and

expensive corrective action seemed unlikely; however monitoring would continue for many more years. Previous authority to $75,000 had been granted, and $85,037.45 was incurred to date. Additional authority to $135,000 was requested for a SMR, corrective action design report (CADR) and implementation of the CADR.

Mr. Larson submitted a motion to approve the claim authority, and Ms. Christiansen seconded the motion, which was approved 5-0.

4. CRPCA 0312-35 – Sexton & Wesley

This state lead community remediation project was awarded in March 2004 to address contamination at two individual sites in the Kossuth County communities of Sexton and Wesley. The sites were originally assessed under the State Lead Closure Contract project.

The sites were each classified high risk for plastic water lines, vapor receptors, and nearby private water wells. Soil excavation and replacement of plastic water lines within the actual plumes were completed at each site. Plastic water lines within the simulated plumes are still considered at risk, and further evaluations were needed to determine the risk to water wells and vapor receptors. The current contract term was set to expire on April 20, 2008. The Administrator's Office requested the Board authorize a 3rd one-year extension to the contract agreement to allow continued activity on the project.

The original contract authority had been $145,500.00, and the current authority was $200,000.00. No additional funding authority was requested. Ms. Christiansen entered a motion to approve the extension, and Ms. Lincoln seconded the motion, which was approved by a vote of 5-0.

5. CRPCA 0312-36 – College Springs & Coin

This state lead community remediation project was awarded in March 2004 to address contamination at two individual sites in the Page County communities of College Springs and Coin. The sites were originally assessed under the State Lead Closure Contract project.

The sites were each classified high risk for plastic water lines, vapor receptors, and nearby water wells. Free product had also been observed at each site. Replacement of plastic water lines within the actual plumes was completed at each site, as well as, a soil excavation at the College Springs site. Plastic water lines within the simulated plumes are still considered at risk, and further monitoring would be needed to determine the risk to water wells and vapor receptors, along with continued free product recovery activities. The current contract term was set to expire on April 20, 2008. The Administrator's Office requested the Board authorize a 3rd one-year extension to the contract agreement to allow continued activity on the project.

The original contract authority had been $84,669.96, and the current authority was $300,000.00. No additional funding authority was requested. Mr. Holcomb entered a motion to approve the extension, and Mr. Larson seconded the motion, which was approved by a vote of 5-0.

6. Site Registration 8608590 – Ron's Car Wash, Inc., Fort Dodge

This site was issued a no action required classification on August 17, 1999. However, the basement sump, located outside the building, had gasoline contamination exceeding the discharge limits for the storm sewer to which it discharges. As a result, a filtration unit was installed on the discharge line to bring the contaminant levels into compliance with the DNR water quality section and the site's NPDES permit. Monthly influent/effluent sampling had been completed by the site's groundwater professional, and current influent levels indicated that treatment of the discharge may be necessary for another five to ten years. Previous authority to $75,000 had been granted, and $87,512.75 was incurred to date. Additional authority to $150,000 was requested for continued operation and maintenance of the filtration unit, as well as influent/effluent sampling.

Mr. Scheidel noted the Board might want to consider paying the current invoices received, as they had been pre-approved charges. Mr. Gastineau noted that $10,000 should cover those outstanding invoices. Ms. Christiansen submitted a motion to approve the claim authority for an additional $10,000, and Ms. Lincoln seconded the motion, which was approved 5-0.

Next the Board considered their policy going forward to pay for the sampling of influent/effluent of waste water from a sump. Mr. Scheidel stated the Board could opt to continue to pay setting a precedent for payment for non-RBCA contamination, or they could offer a settlement payment to the site owner for his ongoing expense, or they could deny ongoing payments under the current statute. Ms. Christiansen submitted a motion to approve the additional authority to $150,000 for ongoing maintenance of the filtration unit and influent/effluent sampling and to seek a settlement with a release. Mr. Larson seconded the motion. After brief discussion, Mr. Scheidel offered to draft a policy for the Board on how to address similar sites. Mr. Holcomb stated he would rather set policy before voting to move forward with these kinds of payments on a particular site. On that note, the motion was not passed by unanimous vote, 0-5.

CONTRACTS ENTERED INTO SINCE THE JANUARY 25, 2008 BOARD MEETING

Mr. Scheidel noted that the Board had entered into a settlement agreement and release with Coastal Mart for a number of Coastal Mart sites, since the last Board meeting.

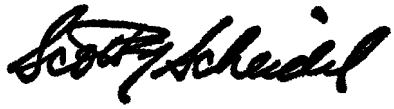
OTHER ISSUES

Due to scheduling conflicts the next Board meeting, scheduled for Friday, March 28th, was re-scheduled for Thursday, March 27th, at 10 A.M.

CORRESPONDENCE AND ATTACHMENTS

Ms. Burke-Boston asked if there was any further business, and there being none, Ms. Christiansen moved to adjourn, and Ms. Lincoln seconded the motion. By a vote of 5-0, the Board adjourned at 12:01 P.M.

Respectfully Submitted,



Scott M. Scheidel
Administrator