MINUTES OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING

October 20, 2020

Video and Teleconference

Approved by the Commission November 17, 2020

RECORD COPY
File Name Admin 01-05
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Meeting Minutes

CALL TO ORDER

The meeting of the Environmental Protection Commission (Commission or EPC) was called to order by Chairperson Ralph Lents at 9:30 a.m. on October 20, 2020 via video and teleconference. A verbal roll call was conducted for Commissioners, DNR staff, and members of the public. Jerah Sheets, Board Administrator, provided a tutorial of the Google Meet features.

COMMISSIONERS PRESENT

Rebecca Dostal
Stephanie Dykshorn
Amy Echard
Lisa Gochenour
Rebecca Guinn
Howard Hill (noted in minutes of partial attendance)
Harold Hommes
Ralph Lents (noted in minutes of partial attendance)
Bob Sinclair

COMMISSIONERS ABSENT

As noted in the meeting timeline

Tamara McIntosh, DNR General Counsel, stated that the Commission is hosting this meeting via teleconference consistent with Iowa Code section 21.8, which authorizes electronic meetings when meeting in person is impossible or impractical. The impractical standard was satisfied due to COVID-19-based medical directives to physically distance.

OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS), § 21.8

> Electronic meetings. 1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following: a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible. b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation. c. Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical. 2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter. 3. A meeting by electronic means may be conducted without complying with paragraph "a" of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

Chairperson Lents announced to the attendees he would be leaving the meeting by 10:30 am and Vice Chairperson Harold Hommes would facilitate the remainder of the meeting.

APPROVAL OF AGENDA

Motion was made by Stephanie Dykshorn to approve the agenda as presented. Seconded by Amy Echard. The Chairperson asked for the Commissioners to approve the agenda by saying aye. There were no nay votes. Howard Hill was absent for the vote.
Motion passes.

AGENDA APPROVED AS PRESENTED

APPROVAL OF MINUTES

Motion was made by Lisa Gochenour to approve the September 15, 2020 EPC minutes as presented. Seconded by Rebecca Guinn.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-absent, Rebecca Guinn-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

APPROVED AS PRESENTED

MONTHLY REPORTS

- Division Administrator Ed Tormey shared with the Commission current flood prevention activity happening along the Missouri River corridor. In partnership with state agencies from Missouri, Kansas, and Nebraska, the DNR is engaging with landowners and stakeholders to identify and prioritize flood prevention areas. DA Tormey also shared that many parts of Iowa are currently under drought conditions. The Department is collaborating with other federal, state, and local authorities to advise communities on drought best practices.
- The monthly reports have been posted on the DNR's website under the appropriate meeting month: http://www.iowadnr.gov/About-DNR/Boards-Commissions

INFORMATION

DIRECTOR'S REMARKS

- Director Kayla Lyon shared with the Commission that Dr. Dale Garner, Division Administrator for the Conservation and Recreation Division, retired at the end of September. Pete Hildreth has been named the new Division Administrator. The DNR is preparing for the upcoming legislative session and is closely following the "Invest in Iowa" proposal. The Prairie Resource Center conducted their fall seed harvest to distribute seeds to public lands. Winterset hosted a watershed field demonstration for source water protection.

INFORMATION

Howard Hill arrived and was present for remainder of the meeting.

CONTRACT WITH GRESHAM SMITH

Laurie Rasmus presented a contract to secure technical and supportive services to the DNR and the EMS program participants. She highlighted the differences in cost proposals between the bids submitted.

Public Comments – None
Written Comments – None

Motion was made by Howard Hill to approve the agenda item as presented. Seconded by Bob Sinclair.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

APPROVED AS PRESENTED

CONTRACT WITH STEARNS, CONRAD AND SCHMIDT CONSULTING ENGINEERS, INC. (DBA SCS ENGINEERS)

Tom Anderson presented a contract for the sustainable materials management (SMM) Phase II projects. These will build upon the shared stakeholder vision identified in SMM Phase I. He anticipates recommendations for code, rule, and policy changes from the stakeholder engagement session.

Public Comments – None
Written Comments – None

Motion was made by Harold Hommes to approve the agenda item as presented. Seconded by Rebecca Guinn.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

APPROVED AS PRESENTED

CONTRACT WITH SENECA COMPANIES, INC.

Elaine Douskey requested approval for a contract to secure professional environmental services for the DNR necessary to achieve objectives of the Leaking Underground Storage Tank (LUST) Trust Fund Project. She provided a summary of the efforts over the past two decades to address leaking underground storage tanks. The contract would address approximately 5 sites for corrective action.

Public Comments – None
Written Comments – None

Motion was made by Howard Hill to approve the agenda item as presented. Seconded by Amy Echard.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

APPROVED AS PRESENTED

Chairperson Ralph Lents left the meeting and Vice Chairperson Harold Hommes facilitated the remainder of the meeting.

ADOPTED AND FILED – CHAPTER 64: "WASTEWATER CONSTRUCTION AND OPERATION PERMITS," TO INCLUDE MINING AND PROCESSING FACILITY DISCHARGES

David Schelling requested approval for the Adopted and Final Chapter 64 rules (General Permit Number 5).

Public Comments – None
Written Comments – None

Motion was made by Bob Sinclair to approve the agenda item as presented. Seconded by Rebecca Guinn.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-absent.
Motion passes.

APPROVED AS PRESENTED

ADOPTED AND FILED – CHAPTER 64: "WASTEWATER CONSTRUCTION AND OPERATION PERMITS," TO INCLUDE PESTICIDE DISCHARGES

Wendy Hieb requested approval for the Adopted and Final Chapter 64 rules (General Permit Number 7).

Public Comments – None

Written Comments – None

Motion was made by Stephanie Dykshorn to approve the agenda item as presented. Seconded by Lisa Gochenour.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-absent.
Motion passes.

APPROVED AS PRESENTED

2021 EPC MEETINGS

Jerah Sheets presented draft meeting dates for 2021 and obtained feedback from the Commissioners. The draft dates will be updated in response to the feedback and presented for final decision during the November EPC meeting.

Public Comments – None
Written Comments – None

INFORMATION

NOTICE OF INTENDED ACTION – CHAPTER 134 UNDERGROUND STORAGE TANK LICENSING AND CERTIFICATION PROGRAMS, CHAPTER 135 TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS, AND CHAPTER 136 FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS

James Gastineau requested approval of the Notice of Intended Action to amend 567 Iowa Administrative Code (IAC) chapters 134, 135, and 136. These proposed amendmends are partially in response to the 2015 federal underground storage tank (UST) rule revisions as contained in 40 Code of Federal Regulations (CFR) Parts 280 and 281, and partially edits identified as part of a five-year rule review process requried by state law. Elaine Douskey and James Gastineau answered questions from the Commission regarding the rules' likely impact to facilities and sites.

Public Comments

- John Maynes, Fuel Iowa, expressed appreciation for the DNR's staff time spent working on the rulemaking and described Fuel Iowa's concerns with EPA's approach for testing methods.
- Brian Wiegert, PMMIC Insurance, shared with the Commission his work in other states and how the DNR's UST staff are excellent to work with. He also expressed concerns that the federal laws, in PMMIC's opinion, create cumbersome procedures and wasted efforts from his clients.

Written Comments – None

Motion was made by Bob Sinclair to approve the agenda item as presented. There was no second to the motion.

MOTION FAILED

The Commission discussed options for tabling, postponing, or delaying the decision.

Motion was made by Howard Hill to table the decision until the November EPC meeting and requested that the DNR and stakeholders submit an updated Notice of Intended Action by October 30, 2020. Seconded by Amy Echard.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-aye, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-absent.
Motion passes.

DECISION TABLED

GENERAL DISCUSSION

- Tamara McIntosh summarized the timeline of the Iowa Grocery Industry Association's petition for a declaratory order, and explained the Commission's procedural rights for further review of the director's refusal to issue a declaratory order. David Steward, Attorney General's Office, was available for discussion. The Commission decided it did not want to exercise its right to review on its own motion the director's refusal.
- Commissioner Bob Sinclair provided a reminder of the approach for public comments.

ADJOURN

Vice Chairperson Hommes adjourned the Environmental Protection Commission video and teleconference meeting at 11:30 a.m. on October 20, 2020.

ADJOURNED

Agenda

Environmental Protection Commission

Tuesday, October 20, 2020
Teleconference: (216) 505-9946 and PIN: 208540651#
Video Conference: https://meet.google.com/rqw-nksu-aak

Tuesday, October 20, 2020
9:30 AM – EPC Business Meeting

If you are unable to attend the business meeting, comments may be submitted to Jerah Sheets at Jerah.Sheets@dnr.iowa.gov or 502 East 9th St, Des Moines IA 50319 up to one day prior to the business meeting for the public record.

1	Approval of Agenda	
2	Approval of the Minutes (Packet Page 3)	
3	Monthly Reports (Packet Page 9)	Ed Tormey (Information)
4	Director's Remarks	Kayla Lyon (Information)
5	Contract with Gresham Smith (Packet Page 12)	Laurie Rasmus (Decision)
6	Contract with Stearns, Conrad and Schmidt Consulting Engineers, Inc. (dba SCS Engineers) (Packet Page 16)	Tom Anderson (Decision)
7	Contract with Seneca Companies, Inc. (Packet Page 20)	Elaine Douskey (Decision)
8	Adopted and Filed – Chapter 64: "Wastewater Construction and Operation Permits," to include Mining and Processing Facility Discharges (Packet Page 24)	David Schelling (Decision)
9	Adopted and Filed – Chapter 64: "Wastewater Construction and Operation Permits," to include Pesticide Discharges (Packet Page 42)	Wendy Hieb (Decision)
10	2021 EPC Meetings (Packet Page 69)	Jerah Sheets (Information)
11	Notice of Intended Action – Chapter 134 Underground Storage Tank Licensing and Certification Programs, Chapter 135 Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, and Chapter 136 Financial Responsibility for Underground Storage Tanks (Packet Page 70)	James Gastineau (Decision)
12	General Discussion • IGIA Declaratory Order (Packet Page 198)	Tamara McIntosh (Information)
13	Items for Next Month's Meeting • Tuesday, November 17, 2020 at 9:30 AM – EPC Business Meeting – Virtual • Tuesday, December 15, 2020 at 9:30 AM – EPC Business Meeting – Virtual	

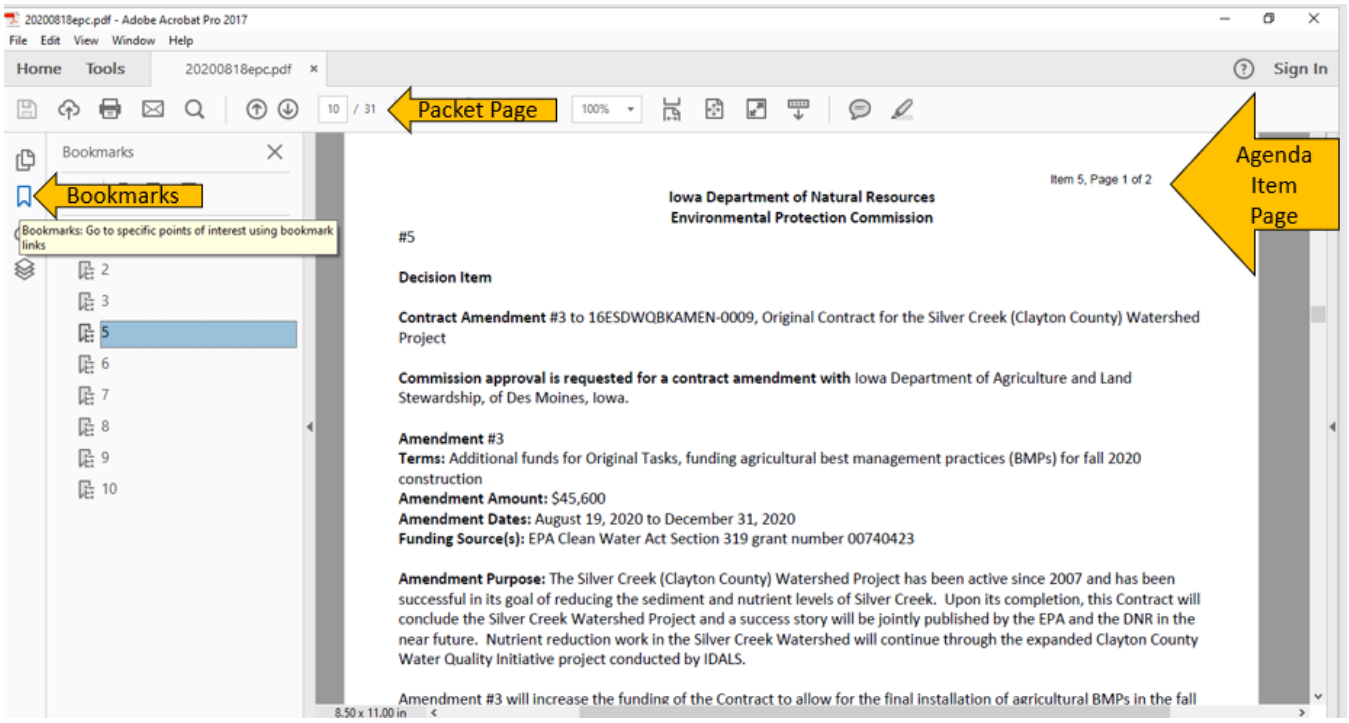
For details on the EPC meeting schedule, visit http://www.iowadnr.gov/About-DNR/Boards-Commissions

[1]Comments during the public participation period regarding proposed rules or notices of intended action are not included in the official comments for that rule package unless they are submitted as required in the Notice of Intended Action.

Any person attending the public meeting and has special requirements such as those related to mobility or hearing impairments should contact the DNR or ADA Coordinator at 515-725-8200, Relay Iowa TTY Service 800-735-7942, or Webmaster@dnr.iowa.gov, and advise of specific needs.

Utilize bookmarks to transition between agenda items or progress forwards and backwards in the packet page by page with the Packet Page number on the agenda.

The upper right-hand corner will indicate the Agenda Item Number and the page of the agenda item.



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Approved by the Commission TBD

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COMMISSIONERS PRESENT

Rebecca Dostal
Stephanie Dykshorn
Amy Echard
Lisa Gochenour
Howard Hill
Harold Hommes
Ralph Lents
Bob Sinclair

COMMISSIONERS ABSENT

Rebecca Guinn

Tamara McIntosh, DNR General Counsel, stated that the Commission is hosting this meeting via teleconference consistent with Iowa Code section 21.8, which authorizes electronic meetings when meeting in person is impossible or impractical. The impractical standard was satisfied due to COVID-19-based medical directives to physically distance.

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APPROVAL OF AGENDA

Motion was made by Howard Hill to approve the agenda as presented. Seconded by Bob Sinclair.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

AGENDA APPROVED AS PRESENTED

OATH OF OFFICE

Director Kayla Lyon swore in Rebecca Dostal to the Commission. Commissioner Dostal introduced herself by sharing some personal interests and professional highlights.

APPROVAL OF MINUTES

Motion was made by Amy Echard to approve the August 18, 2020 EPC minutes as presented. Seconded by Lisa Gochenour.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

APPROVED AS PRESENTED

MONTHLY REPORTS

- Division Administrator Ed Tormey shared with the Commission the monthly variance report and quarterly reports. He noted the reports included some visual data graphs. He celebrated with the Commission thatprogress has been made at a downtown Des Moines Superfund site. A settlement was recently agreed to by the landowner, EPA, and the City of Des Moines requiring site cleanup. Redevelopment seems likely.
- The monthly reports have been posted on the DNR's website under the appropriate meeting month: http://www.iowadnr.gov/About-DNR/Boards-Commissions

INFORMATION

DIRECTOR'S REMARKS

- Director Kayla Lyon summarized the Department's joint efforts with communities on derecho debris disposal and tree damage assessments. Three parks are partially open and one park is temporarily closed while cleanup and recovery efforts continue. Although there have been recent rains, drought conditions continue and it will take the aquifers time to rebound. Lockers and other processing facilities are already at capacity for the upcoming deer harvest season, so the Department has established an online deer exchange program for willing hunters to share their deer. Winterset will be hosting a source water protection field day where landowners, drinking water providers, and other partners will showcase source water protection practices. Dr. Dale Garner, Division Administrator for Conservation and Recreation, will be retiring at the end of September.

INFORMATION

FY 22 BUDGET REQUEST

Jennifer Nelson requested approval of the fiscal year 2022 budget. She briefly explained the entire state budget approval process. She clarifid that ultimately the Governor's budget is developed with information from the Revenue Estimating Conference and set by legislative appropriation.

Public Comments – None
Written Comments – None

Motion was made by Howard Hill to approve the agenda item as presented. Seconded by Bob Sinclair.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

APPROVED AS PRESENTED

CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND (SRF) – FY 2021 INTENDED USE PLAN SECOND QUARTER UPDATE

Theresa Enright requested approval of the SRF quarterly update. She provided additional information about SRF funding flexibility for COVID-impacted loan holders and emergency funding available through CDBG and USDA.

Public Comments – None
Written Comments – None

Motion was made by Bob Sinclair to approve the agenda item as presented. Seconded by Harold Hommes.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

APPROVED AS PRESENTED

CONTRACT WITH UNITED STATES GEOLOGICAL SURVEY (USGS) - IA-IL-MO WATER SCIENCE CENTER

Roger Bruner requested approval for a contract with USGS. He provided information regarding water testing methods and development of stream specific formulae to use real time proxy sensors to calculate loads.

Public Comments – None
Written Comments – None

Motion was made by Lisa Gochenour to approve the agenda item as presented. Seconded by Howard Hill.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

APPROVED AS PRESENTED

ADOPTED AND FILED RULES – CHAPTER 61 – WATER QUALITY STANDARDS (UPDATE TO METALS CRITERIA)

Roger Bruner requested approval for the Adopted and Final Chapter 61. He provided additional information regarding the EPA approved testing methods, along with testing methods still being developed. He explained the rules were written in a manner to be flexible. They allow for the continued use of approved testing methods and contemplate future approved testing methods, too.

Public Comments – None
Written Comments – None

Motion was made by Stephanie Dykshorn to approve the agenda item as presented. Seconded by Amy Echard.
Bob Sinclair-aye, Lisa Gochenour-aye, Howard Hill-aye, Rebecca Guinn-absent, Stephanie Dykshorn-aye, Amy Echard-aye, Harold Hommes-aye, Rebecca Dostal-aye, and Ralph Lents-aye.
Motion passes.

APPROVED AS PRESENTED

GENERAL DISCUSSION

- Jason Marcel, Field Services & Compliance Bureau Chief, provided a summary of the Department's assistance to the City of Casey for their drinking water supply impacted by drought conditions. He also provided an update for Supreme Beef, LLC (formally known as Walz Energy) regarding their construction status, permits, and Nutrient Management Plan submission (currently under review by the Department).

- Jerah Sheets, Board Administrator, obtained feedback from Commissioners for meeting dates and times for calendar year 2021.
- Commissioner Sinclair offered a virtual tour of nutrient sensor equipment to apply nutrients in the field more accurately.

ADJOURN

Chairperson Lents thanked the Commissioners and DNR staff for their efforts. He adjourned the Environmental Protection Commission video and teleconference meeting at 11:00 a.m. on September 15, 2020.

ADJOURNED

Monthly Waiver Report

September 2020

Item #	DNR Reviewer	Facility/City	Program	Subject	Decision	Date	Agency
1	Matt Phoenix	Wright County Agribusiness Park	Water Supply Construction (WC)	A variance from requirements to store hazardous chemicals at least 100' from a deep well by instead placing a diesel generator and electrical transformer at least 50' from the wells within a concrete-curbed secondary containment basin.	Approved	8/31/20	20wcv168
2	Karen Kuhn	Smith Concrete Services	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	8/31/20	20aqv169
3	Michael Hermsen	Van Diest Supply Company	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	8/31/20	20aqv170
4	Michael Smith	Iowa County Sanitary Landfill	Sanitary Disposal (SD)	All wells are located in areas that cannot be developed as a future landfill expansion and the proposed plugging methods conform to abandonment methods allowed under IAC 567, Chapter 39	Approved	9.1.20	20sdv171
5	Geoffrey Spain	Tama County Sanitary Landfill	Sanitary Disposal (SD)	The Landfill is requesting that the temporary stockpiling and burning of tree and brush debris generated during the August 10, 2020 derecho be allowed within the permitted boundary of the Tama County Sanitary Landfill.	Approved	8.31.20	20sdv172
6	David Schelling	Northern Natural Gas Co. - Redfield Station	Wastewater Oper (NP)	Remove temperature monitoring, raw influent flow monitoring, and reduce monitoring of BOD5, CBOD5, TSS, and pH at both outfalls. Revise monitoring required as a 24 hour composite to grab samples.	Approved	9.1.20	20npv173
7	Rachel Quill	Legacy Materials, LLC	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.3.20	20aqv174
8	Ashley Dvorak	Cemstone Concrete Materials - Sac City	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.4.20	20aqv175

9	Nate Tatar	Cemstone Concrete Materials-Fort Dodge S	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.11.20	20aqv176
10	Nate Tatar	Cemstone Concrete Materials-Port. Plant 2	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.11.20	20aqv177
11	Michael Hermsen	REG Ralston LLC	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.9.20	20aqv178
12	Brian Hutchins	POET Biorefining - Coon Rapids	Air Quality Construction Permits	Request to extend construction permit required 2020 summertime stack testing to 2021.	Approved	9.11.20	20aqv179
13	Karen Kuhn	3M Knoxville	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.15.20	20aqv180
14	Fei Guo	Buffalo Shores Park Sanitary Sewer	CP (Wastewater)	The Scott County Conservation is proposing a new sanitary sewer treatment facility for Buffalo Shores Park. The proposed system would not provide the standby power.	Denial	9.15.20	20cpv181
15	Fei Guo	Buffalo Shores Park Sanitary Sewer	CP (Wastewater)	The Scott County Conservation is proposing a chlorine tablet disinfection system using a septic tank as the contact tank, the system would provide a larger tank for disinfection in lieu of baffles for a 40:1 length-to-width ratio.	Approved	9.15.20	20cpv182
16	Priyanka Painuly	John Deere Dubuque Works	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.17.20	20aqv183
17	Karen Kuhn	Bard Concrete	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.17.20	20aqv184
18	Julie Duke	CJ Bio America	AQ	Requesting variance from the max design capacity listed in permits in order to demonstrate emission limit compliance at an increased production rate.	Approved	9.15.20	20aqv185
19	Danjin Zulic	Cambrex Charles City, Inc.	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.17.20	20aqv186
20							

21	Matt Phoenix	NORTH LIBERTY WATER SUPPLY	Water Supply Construction (WC)	A variance from requirements to construct conflicting storm sewers of water main material where sewer/water main separations cannot be obtained by instead constructing the water main of DIP w/ nitrile gaskets.	Approved	9.23.20	20wcv187
22	Priyanka Painuly	Homeland Energy Solutions	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.23.20	20aqv188
	Matt Phoenix	COUNCIL BLUFFS WATER WORKS	Water Supply Construction (WC)	A variance from requirements to construct conflicting storm sewers of water main material where sewer/water main separations cannot be obtained by instead constructing the water main of DIP w/ nitrile gaskets.	Approved	9.23.20	20wcv189
23	Marty Jacobs	City of Pella	CP (Wastewater)	PR Dev., LLC is requesting variance from the Design Standards Chapter 13 – 13.4.3 (Pump Openings) for installing a submersible lift station pump that does not have the capability to pass a 3-inch spherical solid.	Approved	9.14.20	20cpv190

Iowa Department of Natural Resources
Environmental Protection Commission

#5

Decision Item

Contract with Gresham Smith

Commission approval is requested for a contract 21ESDLQBLRASM-0001 with Gresham Smith, of Columbus, OH.

Contract Terms:

Amount: Not to exceed $128,600.

Dates: January 1, 2021 to December 31, 2022.

DNR shall have the option to extend this contract for up to six years from the beginning date of the original contract by executing a signed amendment prior to the expiration of this contract.

Funding Source(s): G550 (solid waste account of the Groundwater Protection Fund)

Statutory Authority: Iowa Code Chapter 455J

Contract Background:

When the Environmental Management System (EMS) program was first developed in FY2009, DNR relied heavily on the expertise of consultants to model the program after established standards. Due to the technical nature of both the program system and its components, expertise from consultants with professional experience in environmental management systems has continued. This contract will ensure that both the DNR and its EMS participants will continue to receive informed, proven advise, training and consultation.

Contract Purpose:

This contract will secure technical and supportive services to the DNR and its EMS program participants. Gresham Smith will support DNR's continuous improvement of the EMS program by providing informed, researched advice and assisting with the planning, development and coordination of participant training. In addition, Gresham Smith will provide technical assistance to new, existing and potentially future participants during focused trainings and individual consultations.

Selection Process Summary:

A formal, competitive bid process was initiated by posting a Notice on TSB website and issuing a Request for Proposals. Two proposals were received and scored by an evaluation committee of five DNR staff members, which resulted in the recommendation of Gresham Smith. The following table summarizes the two proposals that were received.

Name	Location	Average Score	Rank	Bid Amount
Gresham Smith	Columbus, OH	172 of 200	1	$128,660
Burns & McDonnell	Alpharetta, GA	121 of 200	2	$205,957

Contract History:

The DNR has had continual contractual agreements with Gresham Smith since October 20, 2009. The current contract with Gresham Smith will expire on December 31, 2020. A historical summary of the most recent contract and its amendments is described below.

Contract 15ESDLQBLGOLD, original:

Timeframe: January 1, 2015 to June 30, 2016
Amount: $124,325 for 18 months

Contract 15ESDLQBLGOLD, Amendment 1:
Timeframe: July 1, 2016 to June 30, 2018
Amount: $141,287 for 24 months

Contract 15ESDLQBLGOLD, Amendment 2:
Timeframe: July 1, 2018 to June 30, 2019
Amount: $78,524 for 12 months

Contract 15ESDLQBLGOLD, Amendment 3:
Timeframe: July 1, 2019 to December 31, 2020
Amount: $74,372 for 18 months

Laurie Rasmus, Program Planner, Land Quality Bureau
Environmental Services Division
October 20, 2020

Attachment 1: Statement of Work from Contract #21ESDLQBLRASM-0001
We also need Task 2.

Deliverables	Task Milestone Date
Task 1. DNR and EMS Participant Assistance. Contractor will serve as an advisor for DNR, EMS Participants to provide the services summarized below. *Task 1.1 Advice, Coordination and Planning.* Assist DNR with program planning, coordination, and occasional advice. This task includes the following activities: • Develop a calendar of activities to support the EMS Program and its participant agencies. • Develop the concepts and hosting preparations for EMS conferences, workshops and trainings, including identifying speakers and preparing agendas. Note: the material preparation and attendance for these events is covered under the event-specific subtasks. • Periodically provide DNR and EMS Participants professional assistance, research and advice upon request. *Task 1.2 EMS Focused Training.* Conduct on-site training focused on one or more of the ten EMS Elements. This task includes the following activities: • Consult with DNR to determine area of focus for training. • Develop training materials. • Conduct training for one full day every other year, at a minimum. *Task 1.3 On-going EMS Participant Training.* Conduct the following activities to support continual improvement for EMS Participants as needed: • Provide up to four web-hosted meetings for individual or groups of EMS agencies per year. • Review EMS implementation progress and provide guidance to participant agencies. *Task 1.4 EMS Annual Summer Workshop*. Develop materials for and conduct a one-day, on-site EMS workshop during the summers of 2021 and 2022. *Task 1.5 EMS Annual Fall Conference.* Develop materials for and conduct a one-day, on-site EMS Conference during November 2021 and 2022. *Task 1.6 Materials to Benefit Participants and Program.* Develop promotional materials for the EMS program, similar to the "Success Stories" booklet previously developed. *Task 1.7 New Participant Training.* Provide initial training and support for up to two Tier 1 EMS Participant agencies as needed: • Develop materials for and conduct up to two on-site EMS kickoff meetings with new EMS Participants, assuming one each year, in 2021 and 2022. • Provide two webinar trainings on initial EMS development for new EMS Participants.	Ongoing throughout Contract and as requested by the DNR.

• Conduct up to two on-site trainings for new EMS Participants each year in 2021 and 2022. • Conduct two conference calls to provide feedback and advice to new EMS Participants during the development of their plans and policies to implement the ten EMS Elements. *Task 1.8 EMS Participant Recruitment Assistance.* Support DNR in recruiting new EMS participant agencies as needed. *Task 1.9 Additional Assistance.* Provide additional assistance for EMS program participants as requested and agreed upon between Contractor and DNR. Potential assistance needs may include feedback and guidance on developing objectives/targets, determining steps for an action plan or revising a written policy. <u>Task 1 Assumptions.</u> • DNR may determine that some or all on-site events may instead be held virtually in order to adhere to social distancing policies, public safety measures or another reason. A means for estimating the exclusion of travel costs and printing costs for virtual events is to be included. • Contractor will provide printing for on-site workshop and conference materials, assuming approximately 40 pages for each event for up to 50 attendees. • Contractor will provide printing for the on-site EMS Focused Training, assuming reprinting of the DNR EMS Audit Guide or similar (25 color copies) as well as handouts (30 pages, 8.5” x 11”, for up to 30 attendees). • Contractor will produce up to one promotional full color document, 8.5” x 11”, approximately 30 pages in length each. Electronic deliverable (print-ready PDF). No printing is included. • With the assumption that events are held on-site, Contractor will travel for the EMS Focused Training (1 trip), annual EMS Conference (2 trips), kickoff meeting for a new Tier 1 participant each year (2 trips), and one other EMS workshop each year (2 trips). Up to two Contractor staff will attend each event. • Up to two Tier 1 Participant Agencies may join the Solid Waste EMS program during the Contract period.	
Task 2. Program Management. Contractor will provide on-going EMS program management as summarized below. Task 2.1. Ongoing Project management, scheduling and documentation as required and including: • Managing project budget, scope and schedule. • Providing monthly billing invoices. • Providing a summary of costs broken down by tasks, subtasks and expenses.	Ongoing throughout Contract.

Iowa Department of Natural Resources
Environmental Protection Commission

#6

Decision Item

Contract with Stearns, Conrad and Schmidt Consulting Engineers, Inc. (dba SCS Engineers)

Commission approval is requested for a contract with SCS Engineers of Clive, Iowa.

Contract Terms:

Amount: The contract budget shall not exceed $328,250
Dates: October 26, 2020 to October 25, 2022.
DNR shall have the option to extend this Contract for up to six years from the beginning date of the original contract by executing a signed amendment prior to the expiration of this Contract.
Funding Source(s): G550 – Solid Waste Alternatives Program - Solid Waste Tonnage Fees
Statutory Authority: 455E.11

Contract Background:

Iowa's existing solid waste management policy and programs were put in place over 40 years ago and primarily focus on waste discards and how to manage a material at the end of its useful life (recycle, compost, landfill). Over this time, waste management systems and policies continue to evolve, and sustainable materials management (SMM) approaches are becoming more prevalent. SMM focuses on the best use and management of materials based on how they impact the environment throughout their life cycle.

Recognizing the need to update solid waste related policy and programs, the DNR implemented several inter-related initiatives in support of the Sustainable Materials Management – Vision for Iowa Phase II contract, presented here for approval. These initiatives were pursued to provide supporting information for improving citizen awareness and understanding of managing solid waste and to develop a common vision for how solid waste should be viewed and addressed through updated state policy and programs.

Initiatives that have been conducted or are on-going, with EPC approval, as a continuum of Sustainable Materials Management – Vision for Iowa Phase II include:

- **Citizen Awareness and Opinion Survey** - objective was to assess statewide residential awareness including perceptions of solid waste management, household behaviors regarding recycling, and to sample citizen opinions related to sustainability. Survey results provided direction for future public awareness efforts.
- **Sustainable Materials Management – Vision for Iowa** – Phase I of this initiative was developed and implemented to bring Iowa stakeholders together to discuss and develop a preferred vision to guide updating Iowa solid waste management policy and programs using SMM as the foundation. This stakeholder led initiative involved multiple meetings culminating in preferred, shared vision for Iowa highlighting the need to identify a meaningful set of metrics for measuring impacts to public health and the environment, long-term sustainable funding mechanisms and the need for sustainable State policy and programs.
- **Communications Plan -** The Communications Plan has two main objectives.
  The first is to develop and distribute a series of citizen awareness messages designed to increase recycling participation, reduce recycling contamination and to increase public understanding of the recycling process and the importance and value of recycling. To expand the reach of these public awareness messages they are being developed so that local solid waste agencies, private sector recyclers and others can personalize these awareness messages with local program information.

  The second objective of the Communications Plan is to raise citizen awareness and understanding of the SMM approach to solid waste and how public health and environmental quality is better protected under a SMM

system. With EPC approval of the proposed SMM Phase II contract, general updates of Phase II actions and recommendations will also be provided through social media and DNR website postings.

Contract Purpose: The purpose of the SMM – Phase II contract is to build upon the shared stakeholder vision identified in SMM Phase I. Through a series of facilitated stakeholder and subcommittee meetings, Phase II will involve, but is not limited to, setting SMM priorities, research other state's SMM implementation, research and conduct material life cycle analysis to gauge public health and environmental impacts of materials used in commerce from extraction through disposal, and facilitate stakeholder recommendations to implement SMM policy and programs, funding, metrics, etc.

SMM Phase II will be a multi-year, stakeholder led process to update and modernize Iowa's 40+ year solid waste management law. A SMM based system will provide greater protection of public health and the environment, provide an equitable system that offers new economic and job opportunities, better tracks health and environmental impacts of material and goods production and end of life management alternatives.

Selection Process Summary:

- Formal Competitive Process was followed.
  - Date proposals received: The proposal deadline was August 13, 2020
  - Review and Selection Committee:
    - Jennifer Wright, Supervisor – Financial and Business Assistance Section
    - Tom Anderson, Executive Officer II – Financial and Business Assistance Section
    - Laurie Rasmus, Program Planner III – Financial and Business Assistance Section
    - Jennifer Reutzel-Vaughn, Program Planner III - Financial and business Assistance Section
    - Susan Johnson, Environmental Specialist Senior – Solid Waste and Contaminated Sites Section
  - Scoring Criteria:
    - Demonstrated satisfactory performance, including timeliness of completing tasks on previous and present contracts similar in scope to the subject of this RFP.
    - Bidder's professional experience, performance record, and letters of references.
    - Compliance and thoroughness of bidder's response to RFP Technical Proposal.
    - The capacity of the bidder to complete responsibilities described in the Statement of Work.
    - Proposed plan of approach to conduct in-person, virtual meetings, and a combination of both, should virtual meetings be a preferred method for conducting stakeholder and subcommittee meetings.
    - Work plan including time frame, if not already specified in the RFP, for completing Statement of Work tasks.
    - Experience with and understanding of Iowa's integrated solid waste management policies and programs.
    - Experience with life cycle analysis and understanding of SMM.
    - Experience in leading a diverse group of stakeholders in planning and developing policy and program recommendations.
- Proposals Received: Four (4) proposal were received for consideration.
- Recommendation: SCS Engineers is the recommended bidder.

Bidder Name	Location	Score*	Rank	Bid Amount*
Evergreen Sustainability Programming	Vancouver, British Columbia	68.8 to 69.8	4	$462,148 to $534,148
SCS Engineers	Clive, Iowa	98.9 to 98.9	1	$288,500 to $328,250
Burns & McDonnell	Bloomington, Minnesota	71.8 to 75.1	3	$535,400 to $537,900
Foth Infrastructure & Environment	Johnston, Iowa	95.0 to 96.9	2	$312,650 to $357,611

*Note: The range of Score points and the range of Bid Amount cost reflects two unknown factors at the start of the SMM – Vision for Iowa Phase II initiative. These unknowns include:

1. **In-person and virtual meetings**: The cost of conducting in-person meetings is higher than conducting stakeholder meetings and subcommittee meetings through virtual platforms. With the impact of COVID 19 limiting in-person meetings for the foreseeable future, bidders were requested to provide costs associated with both types of meetings on a per meeting basis as well as for the total number of stakeholder meetings (4) and the total number of subcommittee meetings (32) envisioned. The type of stakeholder and subcommittee meetings to be held will be at the discretion of the DNR.
2. **Research and Development**: As Phase II progresses, stakeholders will identify priorities for research and development and provide recommendations for the direction the State should take in advancing solid waste management to that of SMM. Subcommittees will identify research needs including obtaining or conducting a life cycle analysis for specific materials and recommendations of their subcommittee priority (priorities). The hourly rate for conducting research and development was part of bidder cost proposals. DNR will have discretion over the expenditures of these funds.

Scores are based on a total possible score of 120 points that includes the bidder's technical proposal (90 points) and cost proposal (30 points).

Contract History: The DNR has entered into contracts with SCS Engineers on two previous occasions with successful completion of both projects.

Contract #1: Rural Hub and Spoke Study – the purpose was to conduct a comprehensive study assessing the existing rural recycling services, recycling service providers, existing infrastructure, recycling market trends and cost/benefit analysis of existing recycling programs and a hub and spoke recycling system.

Timeframe: November 23, 2015 to December 30, 2016

Amount: $55,000

Amendment: a one month extension to complete economic modeling allowing local solid waste agencies to calculate the economic impacts of implementing a rural hub and spoke recycling system. The amended contract ending date was extended one month to January 30, 2017.

Contract #2: 2017 Statewide Waste Characterization Study - The Contractor performed week long waste sorts at nine (9) Iowa solid waste landfill facilities and four (4) transfer stations to analyze and characterize the municipal solid waste stream being landfilled.

Timeframe: April 19, 2017 through October 30, 2017

Amount: $169,300 **Amended Amount**: $180,200

Amendment: Added a new task to the original 2017 Statewide Waste Characterization Study contract. The new task provided an estimate of the economic impact of recoverable materials (plastic, metal, glass and fiber) disposed of in the landfill had these materials been collected and recycled through existing drop-off and curbside recycling programs.

Specifically, the new task was to estimate the economic impact in terms of:

a. Revenue that could have been realized if the recoverable material had been marketed rather than landfilled;
b. Job creation had the material been recovered and recycled instead of disposed in a landfill; and
c. Greenhouse gas reductions by recycling the recoverable material instead of disposing in a landfill.

Tom Anderson, Executive Officer II, Land Quality Bureau
Environmental Services Division
October 20, 2020

Statement of Work

The following Statement of Work summarizes SCS Engineers' performance responsibilities under this contract:

Deliverables
Task 1: Kick-off Meeting **Description:** Contractor shall meet with DNR staff to review SMM-Vision for Iowa Phase I reports and recommendations, discuss Phase II goals, objections and process, and discuss key stakeholders to engage in Phase II.
Task 2: Develop Phase II Project Plan **Description**: With DNR input, develop a detailed project plan to move the SMM initiative from the visioning phase to the planned development phase.
Task 3: Initial SMM – Vision for Iowa Phase II Stakeholder Meeting **Description:** Develop agenda, with DNR input, and lead initial stakeholder discussions that will include an overview of sustainable materials management; discussion of the project plan, identify, discuss and confirm Phase II priorities, and discuss subcommittee direction and expectations.
Task 4: Stakeholder Meetings **Description:** Following the initial stakeholder meeting, Contractor will prepare and lead a planned three additional stakeholder meetings, that will include presentations on SMM related updates, research and life cycle analyses conducted, subcommittee work during previous period and set goals and objectives of future work.
Task 5: Subcommittee Meetings **Description:** Contractor will prepare and lead a planned 32 subcommittee meetings over the Term of Contract. Four subcommittees are anticipated. Contractor will lead subcommittee meetings to discuss project status, provide project updates, provide research updates, discuss project direction, identify and review priorities, lead subcommittee meeting discussions and develop subcommittee consensus on moving forward.
Task 6: Stakeholder and Subcommittee Meeting Logistics **Description:** In order to ensure meeting efficiency and beneficial outcomes, the Contractor shall, with DNR input, establish meeting dates and locations, ensure presentation equipment is working, and ensure meeting supplies are available for in-person meetings and ensure the conferencing platform meets the needs of the DNR and stakeholders to ensure maximum participation by stakeholders.
Task 7: Research and Development **Description:** Contractor will take the lead, with DNR approval, to conduct or facilitate research and development of SMM priority area data needs that may include sustainable funding mechanisms, life cycle assessments, producer responsibility, other state's SMM related activities, policy and programs.
Task 8: Reporting **Description:** Quarterly reporting shall document the progress in implementing the Project Plan, research conducted, discussion and decisions made during stakeholder and subcommittee meetings.

Iowa Department of Natural Resources
Environmental Protection Commission

#7

Decision Item

Commission approval is requested for a contract with Seneca Companies, Inc.

Contract Terms:

Amount: Not to exceed $48,000
Dates: November 1, 2020 to March 31, 2021.
DNR shall have the option to extend this Contract for up to six years from the beginning date of the original contract by executing a signed amendment prior to the expiration of this Contract.
Funding Source(s): Federal LUST Trust Grant

Contract Purpose:

This Contract will secure professional environmental services for the DNR necessary to achieve objectives of the Leaking Underground Storage Tank (LUST) Trust Fund Project. The contractor will conduct site visits, collect soil, groundwater, or soil vapor samples at LUST sites and complete either a Tier 1 Report, Tier 2 Site Cleanup Report, or Site Monitoring Report or conduct free product recovery and reporting in accordance with Iowa Administrative Code 567-135.6(455B) to 567-135.12(455B). The contractor will be required to submit a scope of work and budget for each site as assigned by DNR; work will not commence at a site until DNR gives approval to the contractor.

Selection Process Summary:

An informal, competitive bid process was initiated by issuing a Request for Proposals. Four firms were invited to bid on the project: ATC Group Services LLC, Waterloo, IA; EcoSource, LLC, Windsor Heights, IA; Geode Environmental, L.L.C., Johnston, IA; and Seneca Companies, Inc., Des Moines, IA. Two proposals were received and scored by an evaluation committee of three DNR staff members. The team recommends contracting with Seneca Companies, Inc.

Contract History:

The DNR has had previous contractual agreements with Seneca Companies, Inc. for environmental field work and reporting. As additional funding was awarded by the EPA, five amendments were made to the original contract to continue environmental work and extend the time of performance previously allowed. A summary of the last contract and its amendments is shown below.

Original Contract ESD7532KAnde120226:
Timeframe: February 23, 2012 to February 22, 2013 Amount: Not to exceed $100,000
Amendment 1, Contract ESD7532KAnde120226:
Timeframe: February 23, 2013 to February 22, 2014 Amount: Not to exceed $40,000
Amendment 2, Contract ESD7532KAnde120226:
Timeframe: February 23, 2014 to February 22, 2015 Amount: Not to exceed $100,000
Amendment 3, Contract ESD7532KAnde120226:
Timeframe: February 23, 2015 to February 22, 2016 Amount: Not to exceed $100,000
Amendment 4, Contract ESD7532KAnde120226:
Timeframe: February 23, 2016 to February 22, 2017 Amount: Not to exceed $100,000
Amendment 5, Contract ESD7532KAnde120226:
Timeframe: February 23, 2017 to February 22, 2018 Amount: Not to exceed $100,000

Total paid on contract **ESD7532KAnde120226** including amendments was approx. $250,000.

Elaine Douskey, Supervisor Underground Storage Tank Section, Land Quality Bureau
Environmental Services Division
October 20, 2020

Section 5 STATEMENT OF WORK

5.1 Statement of Work. Contractor shall perform the following Tasks by the Task Milestone Dates set out in the following table:

Deliverables	Task Milestone Date
Task 1: Quality Assurance Project Plan **Description:** The Contractor shall develop a quality assurance project plan that documents the type and quality of the data needed for environmental decisions and describe the methods for collecting and assessing those data. The quality assurance project plan must be available for review by the DNR upon request.	No later than 30 days after awarding Contract
Task 2: Tier 1 Site Assessment **Description**: These activities will be completed only when directed by the DNR and costs are pre-approved by the DNR. Copies of the Tier 1 Guidance can be obtained from the UST Section web page.	No later than 90 days after site assignment
Task 3: Tier 2 Assessment **Description:** These activities will be completed only when directed by DNR and costs are pre-approved by the DNR. Copies of the Tier 2 Guidance can be obtained from the UST Section web page.	No later than 90 days after site assignment
Task 4: Site Monitoring **Description:** These activities will be completed only when directed by the DNR and costs are pre-approved by the DNR. Conduct site monitoring activities in accordance with IAC 567-135.8. Conduct sample analyses and submit a Site Monitoring Report. Copies of the Site Monitoring Report Guidance can be obtained on the UST Section web page.	No later than 90 days after site assignment
Task 5: Free Product Recovery **Description:** Conduct free product recovery and reporting activities when appropriated in accordance with IAC 567-125.12(11) when directed by the DNR and costs are pre-approved by the DNR.	No later than 45 days after site assignment

Budget. The budget for this Contract shall be as follows:

Task	Amount of compensation allotted to Task	Invoice Due No Later Than
Task 1: Quality Assurance Project Plan	One Quality Assurance Project Plan $250	30 days after completion
Task 2: Tier 1 Site Assessment	<u>Soil boring 25 ft. deep</u> $450 / boring Each additional ft. deeper than 25 ft. $15 / ft. <u>Non-bedrock monitoring well @ 25 ft. deep</u> $1100 / well Each additional ft. deeper than 25 ft. $35 / ft. <u>Soil sample collection and analyses</u> OA-1 Samples $90 / sample OA-2 Samples $65 / sample <u>Water sample collection and analyses</u> OA-1/MTBE samples $150 / sample OA-1 samples $120 / sample OA-2 samples $65 / sample <u>Soil gas sampling</u>	30 days after report submittal

	Soil gas sampling point (drill rig installation) $500 / sample Soil gas sampling point (push probe) $400 / sample Soil gas samples $180 / sample Mobilization/demobilization costs $350 / site Drill Rig Mobilization $800 / mobilization Mileage $0.575 cents / mile (2020 federal rate) Receptor Survey $250 / survey Hydraulic Conductivity Testing $250/test Site Visit $350 / site Tier 1 Report $1250 / report Obtain property right of entry agreement $300 / site Project management / staff time $115 / site Off-site access request $300 / request	
Task 3: Tier 2 Assessment	Soil boring 25 ft. deep $450 / boring Each additional ft. deeper than 25 ft. $15 / ft. Non-bedrock monitoring well @ 25 ft. deep $1100 / well Each additional ft. deeper than 25 ft. $35 / ft. Bedrock well (including drilling @ 25 ft. deep) $2500 / well Each additional ft. deeper than 25 ft. $60 / ft. Soil sample collection and analyses OA-1 Samples $90 / sample OA-2 Samples $65 / sample Water sample collection and analyses OA-1/MTBE samples $150 / sample OA-1 samples $120 / sample OA-2 samples $65 / sample Receptor samples (water line / drinking water well / nondrinking water well / surface water body – collection and analyses) OA-1 / MTBE samples $210 / sample OA-1 samples $150 / sample OA-2 samples $65 / sample Soil gas sampling Soil gas sampling point (drill rig installation) $500 / sample Soil gas sampling point (push probe) $400 / sample Soil gas samples $180 / sample Mobilization/demobilization costs $350 / site Drill Rig Mobilization $800 / mobilization Mileage $0.575 cents / mile (2020 federal rate) Receptor Survey $250 / survey Hydraulic Conductivity Testing $250/test Tier 2 Site Cleanup Report (Original report) $3000 / report Tier 2 Site Cleanup Report (Revised report) $2000 / report Obtain property right of entry agreement $300 / site Site Visit $350 / site Project management / staff time $115 / site Off-site access request $300 / request Environmental Covenant $1500 / environmental covenant Pathway Evaluation One to two pathways $350 / pathway Three to four pathways $300 / pathway	30 days after report submittal

	Five to seven pathways $300 / pathway Per diem for overnight stays Department of Administrative Services current in-state rates	
Task 4: Site Monitoring	Site Visit $350 / site Soil sample collection and analyses OA-1 Samples $90 / sample OA-2 Samples $65 / sample Water sample collection and analyses OA-1/MTBE samples $150 / sample OA-1 samples $120 / sample OA-2 samples $65 / sample Receptor samples (water line / drinking water well / nondrinking water well / surface water body – collection and analyses) OA-1 / MTBE samples $210 / sample OA-1 samples $150 / sample OA-2 samples $65 / sample Soil gas sampling Soil gas sampling point (drill rig installation) $500 / sample Soil gas sampling point (push probe) $400 / sample Soil gas samples $180 / sample Mileage $0.575 cents / mile (2020 federal rate) Receptor Survey $200 / survey Site Monitoring Report (First report) $850 / report Site Monitoring Report (Subsequent reports) $750 / report	30 days after report submittal
Task 5: Free Product Recovery	Site Visit $300 / visit Mileage $0.575 cents / mile (2020 federal rate) Free product measurement and recovery $35 / well Disposal of water and free product $0.75 / gallon Free Product Recovery Report $125 / report Project management / staff time $115 / site	30 days after report submittal
Total	Not to exceed $48,000.00	

Iowa Department of Natural Resources
Environmental Protection Commission

ITEM	**8**	**DECISION**
TOPIC	**Adopted and Filed – Chapter 64: "Wastewater Construction and Operation Permits," to include Mining and Processing Facility Discharges**	

The Department is presenting the attached rule making to the Commission for adoption. The rule making will amend Chapter 64, "Wastewater Construction and Operation Permits," to renew General Permit 5 (GP5). GP5 authorizes the discharge of pollutants from mining and processing facilities to waters of the United States.

The Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on August 12, 2020 as **ARC 5135C**. One public hearing was held via conference call on September 2, 2020. Four people attended the public hearing. No public comments were received.

These amendments are identical to the amendments proposed in the Notice of Intended Action. GP5 is unchanged except that the effective and expiration dates on the cover page of the General Permit have been updated to reflect the effective date of the rule changes.

David Schelling
Water Quality Bureau
Environmental Services Division
September 11, 2020

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby amends Chapter 64, "Wastewater Construction and Operation Permits, Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 455B.173(11).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.173(11) and 455B.186.

Purpose and Summary

The purpose of this rule making is to renew National Pollutant Discharge Elimination System (NPDES) General Permit No. 5 (GP5), which authorizes the discharge of wastewater associated with mining and processing facilities. The permit requires the implementation of best management practices and requires monitoring of the wastewater effluent to determine compliance with applicable limits.

The rule making includes changes to GP5 in order to increase clarity, add definitions, revise the definition for "Water of the United States" to reference the federal definition as of June 22, 2020 (effective date of the final Navigable Waters Protection Rule published by the United States Environmental Protection Agency), and comply with existing state rules. Annual fees are required with GP5. Fees are specified in Iowa Code section 455B.197 and are not impacted by this rule making.

A copy of the proposed permit is available online at www.iowadnr.gov/Environmental-

Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-General-Permits/ GP5-Mining-Processing.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5135C**. A public hearing was held via conference call on September 2, 2020, at 2 p.m. There were four attendees. No public comments were received. These adopted amendments are identical to the amendments proposed in the Notice of Intended Action. GP5 is unchanged except that the effective and expiration dates on the cover page of the General Permit have been updated to reflect the effective date of the rule changes.

Adoption of Rule Making

This rule making was adopted by the Commission on October 20, 2020.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request

by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 20, 2021.

The following rule-making action is adopted:

Amend subrule 64.15(5) as follows:

64.15(5) "Discharge from Mining and Processing Facilities," NPDES General Permit No. 5, effective July 20, ~~2016~~ 2021, to July 19, ~~2021~~ 2026.

IOWA DEPARTMENT OF NATURAL RESOURCES

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

GENERAL PERMIT NO. 5

EFFECTIVE DATES
JULY 20, 2021 THROUGH JULY 19, 2026

FOR

DISCHARGE FROM
MINING AND PROCESSING FACILITIES

Contents

Part I. Coverage Under This Permit

A. Discharges Covered Under This Permit

This permit authorizes discharge of the following to waters of the United States within the State of Iowa:

1. Materials wash water;
2. Materials transport water;
3. Scrubber water used for air pollution control;
4. Water used for dust suppression;
5. Mine or quarry dewatering; and
6. Non-contact cooling water used for cooling of crusher bearings, drills, saws, dryers, pumps and air compressors.

From facilities primarily engaged in mining or quarrying the following materials:

1. Dimension Stone (SIC 1411, NAICS 212311);
2. Crushed and Broken Limestone (SIC 1422, NAICS 212312);
3. Construction Sand and Gravel (SIC 1442, NAICS 212321); or
4. Clay, Ceramic, and Refractory Minerals, NEC (SIC 1459, NAICS 212325), except bentonite and magnesite.

Storm water associated with industrial activity that is discharged into an active mine or quarry, and is mixed with one or more sources of wastewater identified in the preceding paragraph, may be discharged under this permit. Separate storm water discharges, that is, storm water that is not discharged into an active mine or quarry before being discharged to a water of the United States, must be permitted under General Permits #3.

B. Limitations on Coverage

The following discharges are not authorized by this permit:

1. Domestic sewage whether treated or untreated;
2. Non-storm water discharges unless specifically identified in Part I.A. of this permit;
3. Discharges from open dumps as defined under RCRA;
4. The discharge of hazardous substances or oil resulting from an on-site spill;
5. Water used in air pollution control devices by asphalt and concrete manufacturing facilities;
6. Any wastewater not generated at the site of the mine or quarry;
7. Storm water discharges associated with industrial activity defined in Part VI of this permit except those identified in Part I.A. of this permit;
8. Any new or expanded discharge to Outstanding Iowa Waters (OIW), or any new or expanded discharge to Outstanding National Resource Waters (ONRW);
9. Any discharge to a state-owned natural or artificial lake;
10. Any discharge with a sulfate concentration higher than 1,514 mg/L; and
11. Any discharge that the department has shown to be or may reasonably be expected to be contributing to a violation of a water quality standard.

C. Requiring an Individual Permit

1. The department may require any person authorized to discharge under this permit to apply for and obtain an individual NPDES permit by notifying the permittee in writing that an individual permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a

statement setting a deadline to submit the application, and a statement that on the effective date of the individual NPDES permit, coverage under this general permit shall automatically terminate. If a person fails to submit an individual NPDES permit application required by the department under this paragraph, coverage of this general permit automatically is terminated at the end of the day specified for submittal of the individual NPDES permit application.

2. Any person authorized to discharge under this permit may apply for an individual NPDES permit. In such cases, the discharger shall submit an individual application using DNR Forms 1, 2, and 5 in accordance with 567 IAC 64.3(4).
3. When an individual NPDES permit is issued for a discharge authorized under this general permit, the applicability of this general permit is automatically terminated on the effective date of the individual NPDES permit. When an individual NPDES permit is denied for a discharge otherwise subject to this general permit, the applicability of this general permit is automatically terminated on the date of such denial, unless otherwise specified by the department.

D. Authorization

Where a mine or quarry is owned by one person but operated by another person, it is the operator's duty to obtain coverage under this permit.

1. A Notice of Intent (NOI) must be submitted in accordance with the requirements of Part II of this permit to be authorized to discharge under this general permit.
2. Within 30 days of the receipt of a complete NOI, the department will either:
   a. Issue an authorization to discharge; or
   b. Deny coverage under this general permit and require submittal of an application for an individual NPDES permit in accordance with Part I.C.1 of this permit.

   If the department does not respond within 30 days of the receipt of a completed NOI, the discharge is automatically authorized.

Part II. Notice of Intent (NOI) Requirements

A. Deadlines for Filing a Notice of Intent

1. Existing dischargers who had coverage under the general permit that expired July 19, 2021 and who intend to obtain coverage under this general permit shall submit to the department the NOI specified in Part II.C. of this permit no later than January 15, 2022.
2. For new dischargers the NOI specified in this Part shall be submitted to the department at least 30 days prior to the commencement of discharge.

B. Failure to Notify

Dischargers who fail to submit an NOI to be covered by this general permit or an application for an individual permit, and nonetheless discharge pollutants to a water of the United States within the State of Iowa, are in violation of the Clean Water Act and the Code of Iowa.

C. Contents of the Notice of Intent

A complete NOI shall include a completed Notice of Intent (NOI) form, DNR Form 542-4006, or electronic equivalent, signed in accordance with Standard Condition #5 of this permit, and the applicable fee as specified in 567 IAC 64.16(455b). The following information shall be provided in the NOI:

1. Name, street address, and location of the site for which this notification is submitted. The site location must include the 1/4 section, section, township, and range, the latitude and longitude, and the county in which the discharge is located;
2. The owner's name, address, email address, and telephone number;
3. The name, address and telephone number of any operator (contractor);
4. The name, title, email address, and telephone number of a contact person;
5. A description of the discharge which includes:
   a. The type of discharge (new or existing);
   b. Whether or not the discharge is to a municipal separate storm sewer system;
   c. The number of discharge points;
   d. What the discharge includes (quarry dewatering, materials wash water, non-contact cooling water, or air scrubber water);
   e. The name of the receiving stream; and
   f. For new discharges, the date the discharge is to commence.
6. An indication of whether any existing quantitative data collected within three years prior to the effective date of this permit are available describing the concentration of pollutants in discharges;
7. The results of analysis of at least one representative sample of the discharge from each outfall for sulfate. If a discharge is not occurring when the NOI is being completed, a sample result for sulfate shall be submitted within sixty (60) days following the next discharge.
   For sites that are renewing an authorization under General Permit #5, a sample result for sulfate collected within 10 years prior to submittal of the NOI is sufficient; and
8. The Standard Industrial Classification (SIC) code and the North American Industry Classification System (NAICS) for the facility.

D. Where to Submit

Paper Notices of Intent must be submitted to the department at the following address:

NPDES Section
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, IA 50319-0034

E. Continuing Coverage

Any authorization to discharge under this permit is valid only through the permit expiration date. Coverage under this permit remains in effect beyond the expiration date only if the permittee:

1. Has filed a complete Notice of Intent to be covered by a reissued general permit within 180 days after the expiration of this permit; or
2. Has filed a complete application for an individual NPDES permit in accordance with 567 IAC 64.3(4).

This continuing coverage remains in effect only until the department takes final action on the NOI or individual permit application. If this general permit is not reissued, the department will notify each discharger covered by this permit to apply for an individual NPDES permit according to the procedures identified 567 IAC 64.3(4) and Part I.C.1.

F. Transfer of Coverage Under this Permit

See Standard Condition #7.

G. Notice of Discontinuation

1. Within 30 days prior to or after elimination of the wastewater discharge, the operator or owner of the facility shall submit a Notice of Discontinuation (DNR Form 542-8038 or electronic equivalent) to the department.
2. The Notice of Discontinuation shall contain the following information:
   a. The name of the owner/operator to which the permit was issued;
   b. The permit authorization number;
   c. The date the discharge was, or will be, eliminated; and
   d. A signed certification in accordance with Standard Condition #5.

Part III. Effluent Limitations

Any discharge authorized by this permit shall not exceed a maximum concentration for any day of 45 mg/l of Total Suspended Solids (TSS) or a 30 day average concentration of 30 mg/l Total Suspended Solids (TSS), nor shall the pH of the discharge be less than 6.5 or greater than 9.0. Dischargers subject to this permit must be in compliance with these limits upon commencement of coverage and for the entire term of this permit.

Part IV. Monitoring and Reporting Requirements

A. Monitoring Requirements

The following monitoring is required for all facilities subject to this permit. If a facility has multiple discharge points, each discharge point must be monitored.

1. For quarry dewatering and other authorized discharges (except for materials wash water), a representative sample shall be collected at least annually and shall be analyzed for total suspended solids and pH; and
2. For discharges of materials wash water or materials wash water in combination with any other authorized discharge, discharge samples shall be collected at least monthly for each month the discharge occurs. The discharge samples shall be analyzed for total suspended solids and pH. A discharge is considered to contain wash water when there is a wash plant operating at the facility and for one calendar month after the wash plant ceases operation.

B. Reporting

All permittees are required to submit discharge monitoring results on the Annual Discharge Monitoring form, DNR Form 542-8035 or the electronic equivalent, by January 15th each year for the previous calendar year. The Annual Discharge Monitoring form must contain all monitoring as required in Part IV.A and must be signed in accordance with

Standard Condition #5 of this permit. Paper Annual Discharge Monitoring forms must be submitted to NPDES Section, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, IA 50319-0034.

C. Notification

Facilities with at least one discharge through a large or medium municipal separate storm sewer system must submit signed copies of discharge monitoring reports or results to the operator of the municipal separate storm sewer system upon request.

D. Hazardous Condition Documentation and Reporting

1. Six (6) Hour Hazardous Condition Notification
   If you observe or are otherwise made aware of a hazardous condition, as defined in Part VI, which may have resulted from a discharge authorized under this permit, you must immediately notify the department. As required at 567 IAC Chapter 131.2, this notification must be made by telephone within six (6) hours of you becoming aware of the hazardous condition. Notification shall be made by calling the department's Environmental Emergency Reporting Hotline at (515)725-8694. At a minimum, notifications must include the following:
   a. The caller's name and telephone number;
   b. Operator name and mailing address;
   c. The name and telephone number of a contact person, if different than the person providing the 6-hour notice;
   d. How and when you became aware of the hazardous condition;
   e. The exact location of the hazardous condition;
   f. Name of any waterbody affected by the hazardous condition;
   g. Description of the hazardous condition; and
   h. Description of any steps you have taken or will take to contain any hazardous effects.
2. Thirty (30) Day Hazardous Condition Written Report
   Within thirty (30) days of becoming aware of the hazardous condition reported pursuant to Part IV.D.1, you must postmark a written report of the hazardous condition to the appropriate regional department Field Office. The Field Office addresses are available at http://www.iowadnr.gov. Your hazardous condition report must include the information required in 567 IAC Chapter 131.2, Report of Hazardous Conditions. Contact the appropriate department Field Office for more information. A copy of the hazardous condition report submitted to the department must be retained in accordance with Standard Condition #4 of this permit.

E. Retention of Records

See Standard Condition #4.

Part V. Best Management Practices for New and Expanded Dischargers

All new and expanded dischargers must provide settling and pH adjustment sufficient to comply with the numeric effluent limitations in Part III of this permit and, in addition, shall use best management practices which will reduce the discharge of pollutants including the following:

1. Use settled wash water and/or quarry water for dust suppression when dust suppression is necessary; and

2. Locate, design and operate quarry sumps, settling ponds and pumping equipment to maximize the settling of suspended solids prior to discharge.

New and expanded dischargers shall also implement other best management practices which are practical, cost effective and economically efficient including but not limited to the following:

1. Implement recycling of water used for materials washing and classifying whenever it is practical; and
2. Use hydraulic dredging whenever practical and affordable (applicable only to sand and gravel facilities).

Part VI. Definitions

"CWA or Clean Water Act" - means the Federal Water Pollution Control Act.

"Department" - means the Iowa Department of Natural Resources.

"Existing discharge" - means a discharge from a mine or quarry that commenced prior to July 20, 2011.

"Expanded discharge" - means a discharge from a mine or quarry from which: (i) any material was extracted prior to July 20, 2011; and, (ii) new activities will be conducted that will result in a new or increased discharge of pollutants; or, the point of discharge is moved to an upstream location on the same stream. For example, a wash plant is set-up on the site for the first time. An increase in the areal extent of a mine or quarry at an existing site as a result of normal mining does not constitute an expanded discharge for purposes of this permit.

"Facility or activity" - means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Hazardous condition" - any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment. [567 IAC Chapter 131]

"Hazardous substance" - means any substance or mixture of substances that presents a danger to the public health or safety and includes but is not limited to a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. "Hazardous substances" may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act. 455B.381(5),-2019 Code of Iowa.

"Large and Medium municipal separate storm sewer system" - means all municipal separate storm sewers that are either:

(i) located in an incorporated place with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census; or

(ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Department as part of the large or medium municipal separate storm sewer system.

"Municipality" - means a city, town, borough, county, parish, district, association, or other public body created by or under State law.

"New discharge" - means a mine or quarry the construction of which is commenced after July 20, 2011 and from which there is or will be a new, altered or increased discharge of pollutants. A new discharge also includes a mine or quarry the construction of which commenced prior to July 20, 2011 where there will be a discharge into a stream or a stream segment not previously affected by a discharge from the mine or quarry. Construction will be deemed to have commenced beginning with the start of removing overburden.

"Owner or operator" - means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

"Representative sample" – means a sample which can be expected to exhibit the average properties of the discharge.

"Storm water" - means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" - means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122. The term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in the following paragraphs (i)-(xi) of this definition) include those facilities designated under 40 CFR 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this definition;

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate

products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-4225), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)-(vii) or (ix)-(xi) of this definition are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than one acre of total land. Construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39 and 4221-4225.

"Water of the United States or Waters of the U.S." - means those waters defined at 40 CFR §122.2 (June 22, 2020).

"Water quality standard" - means water quality standards established by 567 IAC 61, including the general water quality criteria (narrative standards) in 567 IAC 61.3(2) and the specific water quality criteria (numeric standards) in 567 IAC 61.3(3).

Part VII. Standard Conditions

1. Administrative Rules

Rules of this department that govern the operation of your facility in connection with this permit are published in Part 567 of the Iowa Administrative Code (IAC) in Chapters 60-65, 67 and 121. Reference to the term "rule" in this permit

means the designated provision of Part 567 of the IAC. Reference to the term "CFR" means the Code of Federal Regulations.

2. Definitions

(a) 30 day average means the sum of the total daily discharges by concentration during a calendar month, divided by the total number of days during the month that measurements were made.

(b) Daily maximum means the total discharge by concentration during a twenty-four hour period.

3. Duty to Provide Information

You must furnish to the Director, within a reasonable time, any information the Director may request to determine compliance with this permit or determine whether cause exists for terminating coverage under this permit, in accordance with 567 IAC 64.3(11)"c". You must also furnish to the Director, upon request, copies of any records required to be kept by this permit.

4. Monitoring and Records of Operation

(a) Maintenance of records. You shall retain for a minimum of three years all paper and electronic records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records.***{See 567 IAC 63.2(3)}***

(b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or both. ***{See 40 CFR 122.41(j)(5)}***

5. Signatory Requirements

Applications, reports or other information submitted to the department in connection with this permit must be signed and certified as required by 567 IAC 64.3(8).

6. Other Information

Where you become aware that you failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, you must promptly submit such facts or information. Where you become aware that you failed to submit any relevant facts in the submission of in any report to the Director, including records of operation, you shall promptly submit such facts or information. ***{See 567 IAC 60.4(2)"a" and 567 IAC 63.7}***

7. Transfer of Coverage Under the Permit

Where the owner and/or operator of the facility changes, the department must be notified of the transfer within 30 days. If a discharge is covered by this general permit, the operator of record shall be subject to all terms and conditions of this general permit. The Director shall be notified in writing within 30 days of the transfer. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notifying the department of the transfer. Whenever the address of the operator is changed, the department shall be notified in writing within 30 days of the address change.

8. Proper Operation and Maintenance

All facilities and control systems shall be operated as efficiently as possible and maintained in good working order. A sufficient number of staff, adequately trained and knowledgeable in the operation of your facility shall be retained at all times and adequate laboratory controls and appropriate quality assurance procedures shall be provided to maintain compliance with the conditions of this permit. ***{See 40 CFR 122.41(e) and 567 IAC 64.7(7)"f"}***

9. Permit Modification, Suspension or Revocation

(a) Coverage under this permit may be revoked for cause including but not limited to those specified in 567 IAC 64.3(11) and 567 IAC 64.6(3).
(b) This permit may be modified due to conditions or information on which this permit is based, including any new standard the department may adopt that would change the required effluent limits. ***{See 40 CFR 122.62(a)(2) and 567 IAC 64.3(11)***

The filing of a request for permit modification, revocation or suspension, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

10. Duty to Comply

You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; termination of coverage under this permit; or denial of coverage under a reissued general permit. Authorization to discharge under this permit does not relieve you of the responsibility to comply with all local, state and federal laws, ordinances, regulations or other legal requirements applying to the operation of your facility. ***{See 40 CFR 122.41(a) and 567 IAC 64.7(4)"e"}***

11. Duty to Mitigate

You shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. ***{See 40 CFR 122.41(d) and 567 IAC 64.7(5)"i"}***

12. Twenty-four Hour Reporting

You shall report any noncompliance that may endanger human health or the environment, including, but not limited to, violations of maximum daily limits for any toxic pollutant (listed as toxic under 307(a)(1) of the Clean Water Act) or hazardous substance (as designated in 40 CFR Part 116 pursuant to 311 of the Clean Water Act). Information shall be provided orally within 24 hours from the time you become aware of the circumstances. A written submission that includes a description of noncompliance and its cause; the period of noncompliance including exact dates and times, whether the noncompliance has been corrected or the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent a reoccurrence of the noncompliance must be provided within 5 days of the occurrence. ***{See 567 IAC 63.12}***

13. Noncompliance

You shall report all instances of noncompliance not reported under the Hazardous Condition reporting requirements contained in Part IV at the time monitoring reports are submitted. You shall give advance notice to the appropriate regional field office of the department of any planned activity which may result in noncompliance with permit requirements. ***{See 567 IAC 63.14}***

14. Inspection of Premises, Records, Equipment, Methods and Discharges

You are required to permit authorized personnel to:

(a) Enter upon the premises where a regulated facility or activity is located or conducted or where records are kept under conditions of this permit.
(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
(c) Inspect, at reasonable times, any facilities, equipment, practices or operations regulated or required under this permit.
(d) Sample or monitor, at reasonable times, to assure compliance or as otherwise authorized by the Clean Water Act.

15. Failure to Submit Fees

Authorization to discharge under this permit may be revoked, if the required permit fees are not submitted within thirty (30) days of the date of notification that such fees are due. ***{See 567 IAC 64.16(1)}***

16. Need to Halt or Reduce Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
{See 40 CFR 122.41(c) and 567 IAC 64.7(7)"j"}

17. Notice of Changed Conditions

You are required to notify the director of any changes in existing conditions or information on which this permit is based. This includes, but is not limited to, the following:

(a) As soon as you know or have reason to believe that any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in this permit. ***{See 40 CFR 122.42(a)}***
(b) If you have begun or will begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.
(c) No construction activity that will result in disturbance of one acre or more shall be initiated without first obtaining coverage under NPDES General Permit No. 2 for "Storm water discharge associated with construction activity".

18. Use of Certified Laboratories

Analyses of wastewater that are required to be submitted to the department as a result of this permit must be performed by a laboratory certified by the State of Iowa. Routine, on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements, and operational monitoring tests specified in 567 IAC 63.3(4) are excluded from this requirement.

19. Bypasses

(a) Definition – "Bypass" means the diversion of waste streams from any portion of a treatment facility or collection system. A bypass does not include internal operational waste stream diversions that are part of the design of the treatment facility, maintenance diversions where redundancy is provided, diversions of wastewater from one point in a collection system to another point in a collection system, or wastewater backups into buildings that are caused in the building lateral or private sewer line.
(b) Prohibitions
    i. Bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited.
    ii. Bypass is prohibited and the department may not assess a civil penalty against a permittee for bypass if the permittee has complied with all of the following:
        (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and
        (2) There were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
        (3) The permittee submitted notices as required by paragraph "d" of this section.

(c) The Director may approve an anticipated bypass after considering its adverse effects if the Director determines that it will meet the three conditions listed above and a request for bypass has been submitted to the department in accordance with 567 IAC 63.6(2).
(d) Reporting bypasses. Bypasses shall be reported in accordance with 567 IAC 63.6.

20. Upset Provision

(a) Definition - "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
(b) Effect of an upset. An upset constitutes an affirmative defense in an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph *"c"* of this condition are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
(c) Conditions necessary for demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed operating logs or other relevant evidence that;
    (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
    (ii) The permitted facility was at the time being properly operated;
    (iii) The permittee submitted notice of the upset to the department in accordance with 567 IAC 63.6(3); and
    (iv) The permittee complied with any remedial measures required in accordance with 567 IAC 63.6(6).
(d) Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

21. Property Rights

This permit does not convey any property rights of any sort or any exclusive privilege. ***{See 567 IAC 64.4(3)"b"}***

22. Effect of a Permit

Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403 and 405(a)-(b) of the Clean Water Act, and equivalent limitations and standards set out in 567 IAC Chapters 61 and 62. ***{See 567 IAC 64.4(3)"a"}***

23. Severability

The provisions of this permit are severable and if any provision or application of any provision to any circumstance is found to be invalid by this department or a court of law, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected by such finding.

24. Responsible Person

An operator authorized to discharge under this general permit is responsible for compliance with all terms and conditions of this permit including but not limited to all discharges caused by or resulting from activities by leaseholders, contractors and subcontractors.

Iowa Department of Natural Resources
Environmental Protection Commission

ITEM	**9**	**DECISION**
TOPIC	**Adopted and Filed – Chapter 64: "Wastewater Construction and Operation Permits," to include Pesticide Discharges**	

The Department is presenting the attached rule making to the Commission for adoption. The rule making will amend Chapter 64, "Wastewater Construction and Operation Permits," to renew General Permit 7 (GP7). GP7 authorizes the discharge from a point source to waters of the United States of biological pesticides and chemical pesticides that leave a residue.

The Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on August 12, 2020 as **ARC 5136C**. One public hearing was held via conference call on September 1, 2020. Three people attended the public hearing. No public comments were received.

These amendments are identical to the amendments proposed in the Notice of Intended Action. GP7 is unchanged except that the effective and expiration dates on the cover page of the General Permit have been updated to reflect the effective date of the rule changes.

Wendy Hieb
Water Quality Bureau
Environmental Services Division
September 10, 2020

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby amends Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 455B.173(11).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.173(11) and 455B.186.

Purpose and Summary

The purpose of this rule making is to renew National Pollutant Discharge Elimination System (NPDES) General Permit No. 7 (GP7), which authorizes discharges that result from the application of biological pesticides and chemical pesticides that leave residue from point sources to waters of the United States. The permit covers discharges resulting from the application of pesticides to control aquatic nuisance insects and animals, weeds, algae, bacteria, fungi, fish parasites, and forest canopy pests. Irrigation return flows and agricultural runoff are not covered under GP7 because they are excluded from the Clean Water Act. The permit requires the implementation of best management practices and visual monitoring of the application site for adverse impacts caused by the application of pesticides. No fees are associated with GP7.

The rule making includes formatting and other nonsubstantive changes to GP7 to simplify existing language, improve clarity, and minimize unnecessary duplication. The rule making also includes five substantive changes to GP7 as described below.

- Add coverage for discharges resulting from ground application of a pesticide to a forest canopy since this is a method used to control pests such as the gypsy moth and new pests like the walnut twig beetle.
- Require reporting of the exact location of a hazardous condition and the name of any affected water body as part of the six-hour hazardous condition notification requirements since this information is important for Department response efforts.
- Remove the part titled "Additional Permit Requirements," which states that the Department may impose additional, enforceable permit conditions in a written notice. This part is considered unnecessary since the Department can require an individual permit where requirements beyond those included in the general permit are necessary. Removal of this part does not affect the Department's authority to enforce permit conditions.
- Remove requirements for operators to keep a copy of GP7 since this requirement is not included in other general permits issued by the Department.
- Revise the definition for "Water of the United States" to reference the current federal definition as of June 22, 2020, which is the effective date of the final Navigable Waters Protection Rule published by the United States Environmental Protection Agency.

A copy of the proposed permit is available online at www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-General-Permits/GP7-Pesticides.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5136C**. A public hearing was held via conference call on September 1, 2020, at 2 p.m. Three people attended the public hearing. No public comments were received. These adopted amendments are identical to the amendments proposed in the Notice of Intended Action. GP7 is unchanged except that the effective and expiration dates on the cover page of the General Permit have been updated to reflect the effective date of the rule changes.

Adoption of Rule Making

This rule making was adopted by the Commission on October 20, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written

request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on May 18, 2021.

The following rule-making action is adopted:

Amend subrule 64.15(7) as follows:

64.15(7) "Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States from the Application of Pesticides," NPDES General Permit No. 7, effective May 18, ~~2016~~ 2021, to May 17, ~~2021~~ 2026.

IOWA DEPARTMENT OF NATURAL RESOURCES

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

GENERAL PERMIT NO. 7

EFFECTIVE DATES
MAY 18, 2021 THROUGH MAY 17, 2026

PESTICIDE GENERAL PERMIT (PGP) FOR
POINT SOURCE DISCHARGES TO WATERS OF THE UNITED STATES
FROM THE APPLICATION OF PESTICIDES

TABLE OF CONTENTS

PART I. COVERAGE UNDER THIS PERMIT

A. PERMIT AREA

This permit covers all areas of the State of Iowa.

B. ELIGIBILITY

1. COVERAGE

Except as described under Part I.B.2, this permit authorizes discharges that result from the application of 1) biological pesticides and 2) chemical pesticides that leave a residue from point sources to Waters of the United States (U.S.) (hereinafter referred to "pesticide discharges"). This permit covers the following pesticide use patterns:

a) **Mosquito and Other Flying or Aquatic Nuisance Insect Control** - management of all public health/nuisance pests which develop or are present during a portion of their life cycle in standing or flowing water, when applying pesticides in or over standing or flowing water. Public health/nuisance pests in this use category include but are not limited to mosquitoes and black flies.

b) **Weed, Algae, Bacteria, Fungi, or Fish Parasite Control** - management of weeds, algae, bacteria, fungi, and fish parasites in water and at water's edge including but not limited to lakes, rivers, streams, irrigation canals, and drainage systems.

c) **Aquatic Nuisance Animal Control** - management of invasive or other nuisance species in water and at water's edge. Aquatic nuisance animals in this use category include but are not limited to fish, lampreys, and mollusks.

d) **Forest Canopy Pest Control** - aerial and ground application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where a portion of the pesticide unavoidably will be applied over and deposited to water to target the pests effectively.

2. LIMITATIONS ON COVERAGE

You are required to apply for and/or obtain authorization to discharge under an individual NPDES permit in accordance with the Iowa Administrative Code (IAC) at 567 IAC Chapter 64 if you have a discharge covered by Parts I.B.2.a to I.B.2.e. Refer to Part I.D for a further description of individual NPDES permits.

a) **Discharges to Impaired Waters**

You are not eligible for coverage under this permit for any pesticide discharges to waters identified as impaired by that pesticide or its degradates. Impaired waters are those which have been identified by the department pursuant to Section 303(d) of the Clean Water Act (CWA) as not meeting applicable Iowa water quality standards. Impaired waters include both waters with established Total Maximum Daily Loads (TMDLs) and those for which a TMDL has not yet been established.

b) Discharges to Waters Designated as OIW or ONRW

You are not eligible for coverage under this permit for pesticide discharges to waters designated by the department as Outstanding Iowa Waters (OIW) or Outstanding National Resource Waters (ONRW) (See Attachment 1).

c) Endangered and Threatened Species and Critical Habitat Protection

You are not eligible for coverage under this permit for pesticide discharges to waters that are published critical habitat for federally listed species.

d) Discharges Covered by another Individual or General NPDES Permit

You are not eligible for coverage under this permit for the following types of pesticide discharges:

- Discharges currently covered under another NPDES permit. For example, controlled discharge lagoons with individual permits must request a permit amendment to discharge algaecide residuals.
- Discharges covered within five years prior to the effective date of this permit by another NPDES permit that established site-specific numeric water quality-based limitations.
- Discharges covered by another NPDES permit which has been or is in the process of being denied, terminated, or revoked by the department. This does not apply to the routine reissuance of permits every five years.

e) Any Discharge Resulting From the Use of a Pesticide Contrary to Its Labeling

You are not eligible for coverage under this permit for a discharge that occurs when using a pesticide contrary to its labeling. This permit only covers discharges that occur when a pesticide is applied in accordance with the pesticide product label.

f) Discharges near Shallow Wells and Waters Designated as Drinking Water Supply (Class C)

You are not eligible for coverage under this permit for any pesticide discharges to waters located in any of the following areas, unless you obtain prior authorization from the department:

- Within 50 feet of a shallow well as defined in Part VII;
- Within one-half mile upstream to one-half mile downstream of a river or stream segment designated as a drinking water supply (Class C) in 567 IAC Chapter 61.3(5); or,
- To any lake, reservoir or wetland designated as Class C in 567 IAC Chapter 61.3(5).

In order to request authorization, you must submit the Class C Waters Form to the department at least ninety (90) days before the anticipated pesticide application.

This form and a list of Class C designated waters are available at http://www.iowadnr.gov.

For pesticide discharges to Class C waters, authorization shall only be granted to certified applicators who possess a current certification in Category 5 – Aquatic Pest Control, as licensed by the Iowa Department of Agriculture and Land Stewardship (IDALS).

Authorization will not be granted for pesticide discharges to Class C waters if any of the following conditions apply:

- If the active or inert ingredients in the pesticide are regulated under the Safe Drinking Water Act (SDWA);
- If the pesticide will be applied within 2,000 feet upstream to 100 feet downstream of a public or private water supply intake in a river or stream; or
- If the pesticide will be applied within 2,000 feet of a public or private water supply intake in a lake, reservoir, or wetland.

Notwithstanding the above conditions, authorization may be granted to the impacted water purveyor for discharges from a pesticide application intended to correct or control water quality problems within the water supply or system.

C. AUTHORIZATION TO DISCHARGE UNDER THIS PERMIT

1. HOW TO QUALIFY FOR AUTHORIZATION

To qualify for authorization under this permit, an operator must meet the eligibility requirements as identified in Part I.B. For the purposes of this permit, an operator is defined as any person involved in the application of a pesticide that results in a discharge to a Water of the U.S. that meets either of the following two criteria:

- The person has operational control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or,
- The person has day-to-day operational control of activities which are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit).

2. DISCHARGE AUTHORIZATION

Except as described under Part I.B.2, pesticide discharges are immediately authorized under this permit as long as the conditions of this permit are satisfied.

3. CONTINUATION OF THIS PERMIT

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 567 IAC Chapter 64 and will remain in force and effect. If you were authorized to discharge under this permit prior to the expiration

date, any pesticide discharges authorized under this permit will automatically remain covered by this permit until the earliest of:

- The issuance or denial of an individual permit for pesticide discharges that would otherwise be covered under this permit; or
- A decision by the department to revoke or not reissue this general permit because the supporting law no longer requires it, at which time the department will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit, if required by federal or state law.

4. DISCONTINUATION OF COVERAGE

Coverage under this permit is terminated when an operator no longer has pesticide discharges or the discharges are covered under an individual permit.

D. REQUIRING AN INDIVIDUAL NPDES PERMIT

1. THE DEPARTMENT REQUIRING COVERAGE UNDER AN INDIVIDUAL PERMIT

The department may require you to apply for and/or obtain authorization to discharge under an individual NPDES permit in accordance with 567 IAC Chapter 64.3(4) "a". If you are required to apply for an individual permit, you will be notified in writing that an individual permit application must be submitted. This notification will include a brief statement of the reasons for this decision and will provide application information. In addition, if you are an operator whose discharges are authorized under this general permit, the notification will set a deadline for submitting the individual permit application. The deadline shall be no longer than one year from the date of the written notification, and the notification will state that coverage under this general permit will terminate on the effective date of the individual NPDES permit.

The department may grant additional time to submit the individual permit application if you submit a request setting forth reasonable grounds for additional time. If you are covered under this general permit and fail to submit an individual NPDES permit application (if required by the department), then your coverage under this general permit is terminated at the end of the day on the date the department specified as the deadline for application submittal. The department may take appropriate enforcement action for any unpermitted discharge.

2. OPERATOR REQUESTING COVERAGE UNDER AN INDIVIDUAL PERMIT

You may request to be excluded from coverage under this general permit by applying for an individual NPDES permit. In such a case, you must submit the reason for the request and an individual permit application in accordance with the requirements of 567 IAC Chapter 64 to the Iowa Department of Natural Resources, NPDES Section at 502 East 9th Street, Des Moines, IA 50319. If your reasons are warranted, the department may grant your request by issuing an individual NPDES permit for pesticide discharges. Your

authorization to discharge under this general permit is terminated on the issuance date of the individual permit.

E. SEVERABILITY OF THIS PERMIT

Invalidation of a portion of this permit does not necessarily render the whole permit invalid. The department's intent is that the permit is to remain in effect to the extent possible. In the event that any part of this permit is invalidated, the department will advise the regulated community as to the effect of such invalidation.

F. OTHER FEDERAL AND STATE LAWS

You must comply with all other applicable federal and state laws that pertain to your application of pesticides. This includes but is not limited to: Iowa Code Chapter 206; 21 IAC Chapter 45; 567 IAC Chapter 131; 571 IAC Chapter 54; and, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its implementing regulations.

PART II. TECHNOLOGY-BASED EFFLUENT LIMITATIONS

A. REQUIREMENTS

All operators must implement the control measures in this Part to minimize pesticide discharges. The term "minimize" means to reduce and/or eliminate discharges using control measures (e.g., best management practices) and to the extent technologically and economically practicable and achievable.

1. PEST MANAGEMENT TOOLS

Prior to a pesticide discharge pursuant to this permit, you must evaluate alternative pest management tools while considering pest resistance, feasibility, cost effectiveness, and the impact to water quality and non-target organisms. Alternative management tools include:

- No action
- Prevention of the situation requiring pest management
- Mechanical/physical methods of pest management
- Cultural methods of pest management
- Biological control agents (e.g. predators)
- Available pesticides appropriate for the target pest.

The pest management tools chosen must be efficient and effective means of pest management and must successfully minimize discharges resulting from the application of pesticides.

2. PESTICIDE APPLICATION RATE

In order to use the lowest effective amount of pesticide product per application, follow the pesticide product label instructions and apply pesticides at no more than the recommended application rate.

3. REGULAR MAINTENANCE ACTIVITIES

Perform regular container maintenance activities to minimize potential for leaks, spills, and unintended or accidental release of pesticides from pesticide containers to Waters of the U.S. Maintain application equipment in proper operating condition by adhering to any manufacturer conditions and industry practices and by calibrating, cleaning, and repairing equipment on a regular basis to ensure effective pesticide application and pest control. Properly calibrate equipment to deliver no more than the recommended application rate as noted on the pesticide product label. Proper calibration includes but is not limited to the following: nozzle choice, and droplet size.

PART III. WATER QUALITY-BASED EFFLUENT LIMITATIONS

Pesticide discharges that cause or contribute to an excursion of any applicable numeric or narrative state water quality standard (WQS) as stated in 567 IAC Chapter 61 are prohibited and are a violation of this permit. If at any time you become aware, or the department determines, that your discharge causes or contributes to an excursion of applicable WQS, you must take corrective action as required in Part V. The department may impose additional water quality-based limitations or require you to obtain coverage under an individual permit if your discharges are not controlled as necessary to meet applicable WQS.

PART IV. MONITORING REQUIREMENTS

A. BASIC MONITORING REQUIREMENTS

All operators must:

- Monitor the amount of pesticide applied to ensure that you apply no more than the recommended application rate as noted on the pesticide product label;
- Monitor your pesticide application activities to ensure you are performing regular maintenance activities; and
- Monitor your application equipment to ensure that it is in proper operating condition.

This monitoring is intended to minimize the potential for leaks, spills, and unintended or accidental discharge of pesticides.

B. VISUAL MONITORING REQUIREMENTS

All operators must conduct visual assessment(s) of the application site(s) as follows:

- During the application when considerations for safety and feasibility allow; and
- During any post-application surveillance or efficacy check.

Visual assessments will consist of spot checks in the area to and around where pesticides are applied for possible and observable adverse impacts caused by your application of pesticides. Possible and observable adverse impacts include, but are not limited to:

- The unanticipated death or distress of non-target organisms;
- Disruption of wildlife habitat; and
- Disruption of recreational or municipal water use.

PART V. CORRECTIVE ACTION

A. SITUATIONS REQUIRING REVISION OF CONTROL MEASURES

If any of the following situations occur, you must review and, as necessary, revise the selection and implementation of your control measures to ensure that the situation is eliminated and will not be repeated in the future:

- An unauthorized release or discharge (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs;
- You become aware, or the department determines, that your control measures are not adequate or sufficient for the discharge to meet applicable WQS;
- You become aware, or the department determines, that you failed to perform regular container maintenance activities or to maintain application equipment in proper operating condition as required in Part II.A.3;
- Your monitoring activities, as required in Part IV, determine that you applied more than the recommended application rate as noted on the pesticide product label or failed to properly calibrate equipment to deliver the recommended application rate;
- An inspection or evaluation of your activities by the department determines that modifications to the control measures are necessary to meet the non-numeric effluent limits in this permit, or
- You observe or are otherwise made aware of a hazardous condition, as defined in Part VII.

B. CORRECTIVE ACTION DEADLINES

If you determine that changes to your control measures are necessary to eliminate any situation identified in Part V.A, such changes must be made before the next pesticide application that results in a discharge, or as soon as practicable.

C. HAZARDOUS CONDITION DOCUMENTATION AND REPORTING

1. SIX (6) HOUR HAZARDOUS CONDITION NOTIFICATION

If you observe or are otherwise made aware of a hazardous condition, as defined in Part VII, which may have resulted from a discharge from your pesticide application, you must immediately notify the department. As required at 567 IAC Chapter 131.2, this notification must be made by telephone within six (6) hours of you becoming aware of the hazardous condition. Notification shall be made by calling the department's Environmental

Emergency Reporting Hotline at (515)725-8694. Notifications must include at least the following information:

- The caller's name and telephone number;
- Operator name and mailing address;
- The name and telephone number of a contact person, if different than the person providing the 6-hour notice;
- How and when you became aware of the hazardous condition;
- The exact location of the hazardous condition;
- Name of any waterbody affected by the hazardous condition;
- Description of the hazardous condition identified, including the U.S. EPA pesticide registration number for each product you applied in the area of the hazardous condition; and
- Description of any steps you have taken or will take to contain any hazardous effects.

The hazardous condition notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

2. THIRTY (30) DAY HAZARDOUS CONDITION WRITTEN REPORT

Within thirty (30) days of becoming aware of the hazardous condition reported pursuant to Part V.C.1, you must postmark a written report of the hazardous condition to the appropriate department field office. The field office addresses are available at http://www.iowadnr.gov. Your hazardous condition report must include the information required in 567 IAC Chapter 131.2, Report of Hazardous Conditions. Contact the appropriate department field office for more information. You must report hazardous conditions even for those instances when the pesticide labeling states that adverse effects may occur. A copy of the hazardous condition report submitted to the department must be retained in accordance with Part VI of this permit.

Note that if the department provides future notification to dischargers that other reporting options are available (e.g., electronic submission), operators may take advantage of those options to satisfy the reporting requirements of this permit.

PART VI. RECORDKEEPING

You must keep written records as required in this permit. These records must be accurate and complete to demonstrate your compliance with the conditions of this permit. You can rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided all requirements of this permit are satisfied.

A. REQUIRED RECORDS

All operators are required to keep the following records:

- A copy of any written Hazardous Condition Reports (See Part V.C.2);
- A copy of any Class C Waters Form (See Part I.B.2.f); and
- Any correspondence exchanged between you and the department specific to coverage under this permit.

B. MAINTENANCE AND AVAILABILITY OF RECORDS

You must retain the records outlined in Part VI.A for a period of at least three (3) years from the date that the record was generated, even if your coverage under this permit expires or is discontinued before the end of the three year period. All records kept under this section must be made available upon request to an authorized representative from the department, U.S. EPA, or IDALS.

PART VII. DEFINITIONS, ABBREVIATIONS, AND ACRONYMS

A. DEFINITIONS

Active Ingredient –

a) In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

b) In the case of a plant growth regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof.

c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

[Iowa Code Section 206.2]

Best Management Practices (BMPs) – schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to Waters of the U.S. BMPs also include treatment requirements, operating procedures, and practices to control spillage or leaks, or drainage from raw material storage. [40 CFR 122.2]

Biological Control Agents – organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. [U.S. FWS IPM Guidance, 2004]

Biological pesticides (also called biopesticides) – include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP).

Microbial pesticide means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that

(1) Is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;

(2) Is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaebacteria; or

(3) Is a parasitically replicating microscopic element, including but not limited to, viruses.

[40 CFR 158.2100(a)]

Biochemical pesticide means a pesticide that

(1) Is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance;

(2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and

(3) Has a non-toxic mode of action to the target pest(s). [40 CFR 158.2000(a)]

Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. [40 CFR 174.3]

Certified Applicator – any individual who is certified under 21 IAC Chapter 45 as authorized to use any pesticide. [Iowa Code Section 206.2]

Chemical pesticides – all pesticides not otherwise classified as biological pesticides.

Code of Federal Regulations (CFR) – the federal administrative rules adopted by the United States.

Control Measure – refers to any BMP or other method used to meet the effluent limitations to minimize the discharge of pollutants to Waters of the U.S.

Cultural Methods – manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

Discharge – when used without qualification, means the "discharge of a pollutant."

Discharge of a pollutant – any addition of any pollutant or combination of pollutants to Waters of the U.S. or waters of the state from any point source. "Discharge of a pollutant" includes additions of pollutants into navigable waters or waters of the state from surface runoff which is collected or channeled by human activity; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through

pipes, sewers, or other conveyances, leading into privately owned treatment works. [567 IAC Chapter 60]

Facility or Activity – any NPDES "point source" that is subject to regulation under the NPDES program.

Hazardous condition – any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment. [567 IAC Chapter 131]

Hazardous substance – any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of substances which, in sufficient quantity, may be hazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons; radioactive materials; sludges; and organic solvents. [567 IAC Chapter 131]

Impaired Water – A water is impaired for purposes of this permit if it has been identified by the department pursuant to Section 303(d) of the CWA as not meeting applicable Iowa water quality standards (see 567 IAC Chapter 61). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

Inert Ingredient – an ingredient which is not an active ingredient. [Iowa Code Section 206.2]

Insect – any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice. [21 IAC Chapter 45]

Label – the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device. [Iowa Code Section 206.2]

Mechanical/Physical Methods – mechanical tools or physical alterations of the environment for pest prevention or removal.

Minimize – to reduce and/or eliminate pesticide discharges to Waters of the U.S. through the use of control measures and to the extent technologically and economically practicable and achievable.

Non-target Organisms – includes the plant and animal hosts of the target pest, the natural enemies of the target pest living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

Operator – For the purposes of this permit, an operator is defined as any person involved in the application of a pesticide that results in a discharge to a Water of the U.S. that meets either of the following two criteria:

- The person has operational control over the financing for, or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or,
- The person has day-to-day operational control of activities which are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit).

Person – any individual, partnership, association, corporation, or organized group of persons whether incorporated or not. [Iowa Code Section 206.2]

Pest – Any insect, rodent, nematode, fungus, weed, or any form of plant and animal life, virus, or other microorganism, except viruses or other microorganisms on or in living man or other living animals, which exists under circumstances that make it unduly injurious to plants, man, domestic animals, other useful vertebrates, useful invertebrates, or other articles or substances. [21 IAC Chapter 45]

Pesticide –

a) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living persons, which the secretary shall declare to be a pest, and

b) any substances intended for use as a plant growth regulator, defoliant, or desiccant.

[Iowa Code 206.2]

Defoliant means any substance or mixture of substances intended for causing the leaves or foliage to drop from the plant with or without causing abscission. [21 IAC Chapter 45]

Desiccant means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue. [21 IAC Chapter 45]

Plant growth regulator means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. [Iowa Code 206.2]

Pesticide Discharges – means "Pesticide Discharges to Waters of the United States from Pesticide Application"

Pesticide Discharges to Waters of the United States from Pesticide Application – means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to Waters of the United States. In the context of this definition of pesticide discharges to Waters of the United States from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14)).

Pesticide Product – a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

Pesticide Residue – includes that portion of a pesticide application that is discharged from a point source to Waters of the U.S. and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

Point source – any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. "Point source" does not include return flows from irrigated agriculture or agricultural storm water runoff. [567 IAC Chapter 60]

Pollutant – sewage, industrial waste, or other waste. [567 IAC Chapter 60]

Sewage means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present.

Industrial waste means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business, or from the development of any natural resource.

Other waste means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste.

Shallow well – means a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn. [567 IAC Chapter 40]

Target Pest – the organism(s) toward which pest management tools are being directed.

Total Maximum Daily Loads (TMDLs) – A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations for point source discharges, load allocations for nonpoint sources and/or natural background, and must include a margin of safety and account for seasonal variations.

Toxic – causing or producing a dangerous physiological, anatomic or biochemical change in a biological system. [567 IAC Chapter 131]

Use of a pesticide contrary to its labeling – to use any registered pesticide in a manner not permitted by the labeling provided that the phrase shall not include:

1. Applying a pesticide for agricultural or horticultural purposes only at any dosage, concentration, or frequency less than that specified on the labeling.
2. Applying a pesticide for agricultural or horticultural purposes only against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling; or
3. Employing any method of application not prohibited by the labeling for agricultural or horticultural purposes only.
4. Mixing pesticides or mixing pesticide with a fertilizer when such mixture is not prohibited by the labeling for agricultural or horticultural purposes only.

[21 IAC Chapter 45]

Waters of the United States or Waters of the U.S. – means those waters defined at 40 CFR 122.2 (June 22, 2020).

Water Quality Standards (WQS) – A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. Water quality standards also include an antidegradation policy and implementation procedures. Iowa's Water Quality Standards are contained in 567 IAC Chapter 61.

Weed – any plant which grows where not wanted. [21 IAC Chapter 45]

Wetlands - means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

You and Your – as used in this permit are intended to refer to the operator, or the discharger as the context indicates and that party's activities or responsibilities.

B. ABBREVIATIONS AND ACRONYMS

BMP – Best Management Practice
CFR – Code of Federal Regulations
CWA – Clean Water Act (or the Federal Water Pollution Control Act, 33 U.S.C. §§1251 *et seq.*)
FIFRA – Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*
IAC – Iowa Administrative Code
NPDES – National Pollutant Discharge Elimination System
OIW – Outstanding Iowa Water
ONRW – Outstanding National Resource Water
SDWA – Safe Drinking Water Act
TMDL – Total Maximum Daily Load
U.S. – United States
U.S.C. – United States Code
U.S. EPA – United States Environmental Protection Agency
U.S. FWS – United States Fish and Wildlife Service
WQS – Water Quality Standard

PART VIII. STANDARD CONDITIONS

A. DUTY TO COMPLY

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Code of Iowa and the Clean Water Act and is grounds for enforcement action; for termination of coverage under this general permit; and/or, for denial of a request for coverage under a reissued general permit.

B. CONTINUATION OF THE EXPIRED GENERAL PERMIT

This permit expires on May 17, 2026. An expired general permit continues in force until replaced by adoption of a new general permit or rescinded by the department.

C. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. DUTY TO PROVIDE INFORMATION

The permittee shall furnish to the department, within a reasonable time, any information which the department may request to determine compliance with this permit. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

F. OTHER INFORMATION

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in any report to the department, he or she shall promptly submit such facts or information.

G. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

H. PROPERTY RIGHTS

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws.

I. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

J. INSPECTION AND ENTRY

The permittee shall allow the department or an authorized representative of U.S. EPA, the State, or county, upon the presentation of credentials and other documents as may be required by law, to:

- Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
- Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
- Inspect at reasonable times any facilities or equipment (including monitoring and control equipment); and
- Sample any discharge of pollutants.

K. PERMIT ACTIONS

Coverage under this permit may be terminated for cause. The notification of planned changes or anticipated noncompliance does not stay any permit condition.

L. ENVIRONMENTAL LAWS

No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations. Pertinent regulations include but are not limited to the following: 40 CFR 122.41(j)(5); 567 IAC 63.1; 567 IAC 63.2; 567 IAC 63.6; 567 IAC 63.12-15; 567 IAC 64.3(8); and 567 IAC 64.7(7)“f”.

Attachment 1: ONRW and OIW Waters in Iowa

Outstanding National Resource Waters (ONRW)

There are no waters in Iowa designated as Outstanding National Resource Waters as of the date of issuance of this permit.

Outstanding Iowa Waters (OIW)

STREAM	DESCRIPTION	LENGTH (Miles)
Baron Springs	Mouth (S2, T91N, R6W, Clayton Co.) to spring source (S4, T91N, R6W, Clayton Co.)	1.99
Bear Creek	From road crossing in SW ¼, NW1/4, S11, T86N, R10W, Benton Co. to E line,S25, T87N, R10W, Buchanan Co.	5.2
Bloody Run	From (W. line of Section 22, T95N, R4W, Clayton Co.) to the confluence with Unnamed Creek (NAD83) UTM Coordinates X(Easting) 645284.89 Y(Northing) 4766657.44	8.59
Brownfield Creek	Mouth (Clayton Co.) to spring source (S31, T91N, R3W, Clayton Co.)	0.94
Clear Creek	Mouth (Allamakee Co.) to W. line of Section 25, T99N, R4W, Allamakee Co.	3.79
Deer Creek	Road crossing in SE¼, S35, T100N, R19W, Worth Co. to the N. line of S7, T100N, R19W, Worth Co.	7.29
Dousman Creek	Mouth (S33, T96N, R3W, Allamakee Co.) to Allamakee-Clayton Co. line.	3.44
Duck Creek	From the mouth (S14, T100N, R06W Allamakee Co.) to the Iowa-Minnesota state line.	1.98
Ensign Creek (aka Ensign Hollow)	Mouth (S28, T92N, R6W, Clayton Co.) to spring source (S29, T92N, R6W, Clayton Co.)	1.05
Unnamed Creek (aka Erickson Spring Branch)	Mouth (S23, T98N, R4W, Allamakee Co.) to W. line of S23, T98N, R4W, Allamakee Co.	0.91
French Creek	Mouth (Allamakee Co.) to E. line of Section 23, T99N, R5W, Allamakee Co.	5.58
Grannis Creek	Mouth (S30, T95N, R7W, Fayette Co.) to W. line of S36, T93N, R8W, Fayette Co.	3.56
Jones Creek	From the mouth (S19, T98N, R04W Allamakee Co.) to bridge crossing at Clonkitty Rd. (S14, T98N, R05W Allamakee Co.)	5.75

Kleinlein Creek	Mouth (Clayton Co.) to spring source (South Spring) (S10, T91N, R6W, Clayton Co.)	3.96
Lime Creek	From confluence with unnamed tributary in NE ¼, NW ¼, S34, T87N, R10W, Buchanan Co. to N. line of S23, T87N, R10W, Buchanan Co.	3.0
Little Paint Creek	Mouth to N. line of Section 30, T97N, R3W	1.92
Ludlow Creek	Mouth (S2, T96N, R6W, Allamakee Co.) to confluence with an unnamed tributary (S33, T97N, R6W, Allamakee Co.)	2.00
Mill Creek (aka Big Mill Creek)	Confluence with Little Mill Cr. to confluence with Unnamed Cr. (S1, T86N, R3E, Jackson Co.)	8.04
Mossey Glen Creek	Mouth (S3, T91N, R5W, Clayton Co.) to S. line of S10, T91N, R5W, Clayton Co.	1.96
North Bear Creek	Mouth (S25, T100N, R7W, Winneshiek Co.) to Iowa-Minnesota state line.	6.39
Pine Creek (aka South Pine Creek)	Mouth (S26, T99N, R7W, Winneshiek Co.) to N. line of S21, T99N, R7W, Winneshiek Co.	2.80
Smith Creek (aka Trout River)	Mouth (S21, T98N, R7W, Winneshiek Co.) to S. line of S33, T98N, R7W, Winneshiek Co.	3.42
South Canoe Creek	From the mouth (S22, T99N, R08W Winneshiek Co.) to the bridge crossing at Winn Rd. (S21, T99N, R08W Winneshiek Co.)	1.90
Spring Branch Creek	Mouth (S10, T88N, R5W, Delaware Co.) to spring source (S35, T89N, R5W, Delaware Co.)	2.83
Storybook Hollow	Mouth (S7, T86N, R4E, Jackson Co.) to S. line of S12, T86N, R3E, Jackson Co.	1.37
Trout Run	Mouth (S16, T98N, R4W, Allamakee Co.) through one mile reach.	1.0
Twin Springs Creek	Mouth (S17, T98N, R8W, Winneshiek Co.) to springs in Twin Springs Park (S20, T98N, R8W, Winneshiek Co.)	0.61
Unnamed Creek (aka Cold Water Creek)	Mouth (S32, T100N, R9W, Winneshiek Co.) to N. line of Section 31, T100N, R9W, Winneshiek Co.)	2.46
Unnamed Creek (aka S. Fk. Big Mill)	Mouth (S8, T86N, R4E, Jackson Co.) to W. line of S17, T86N, R4E, Jackson Co.	0.97
Village Creek	Mouth (Allamakee Co.) to W. line of S19, T98N, R4W, Allamakee Co.	13.32
Waterloo Creek	Mouth (S35, T100N, R6W, Allamakee Co.) to Iowa-Minnesota state line.	9.39

West Branch French Creek	From the mouth (S23, T99N, R05W, Allamakee Co.) to the confluence with Unnamed Creek (S26, T99N, R05W, Allamakee Co.)	0.67
	Grand Total:	**118.08**
LAKES	**DESCRIPTION (Section, Township, Range)**	**SIZE (Acres)**
Big Spirit Lake SGMA	S33, T100N, R36W	5684
West Okoboji Lake SGMA	S20, T99N, R36W	3,847

Iowa Department of Natural Resources
Environmental Protection Commission

10
Information Item
2021 EPC Meeting Dates

The Department is seeking feedback from the Commission for 2021 Environmental Protection Commission meeting dates and locations. Virtual meetings would start at 9:30 am while physical location meetings would start at 10:30 am to allow for commuting time.

Wednesday, January 20, 2021
- 7:30-9:30 a.m. Legislative Meet & Greet Event – State Capitol
- 10 a.m. – 12:30 p.m. Joint NRC/EPC Meeting – Polk County
- 1-4:30 p.m. EPC Business Meeting – Polk County

February 16, 2021 – EPC Business Meeting – Polk County

March 16, 2021 – EPC Business Meeting – Polk County

April 19, 2021 – Education Tour – Hamilton/Hardin County
April 20, 2021 – EPC Business Meeting – Polk County

May 18, 2021 – EPC Business Meeting – Polk County

June 15, 2021 – EPC Business Meeting – Polk County

July 20, 2021 – EPC Business Meeting – Polk County

August 17, 2021 – EPC Business Meeting – Polk County

September 20, 2021 – Educational Tour – Greene/Guthrie County
September 21, 2021 – EPC Business Meeting – Polk County

October 19, 2021 – EPC Business Meeting – Polk County

November 16, 2021 – EPC Business Meeting – Polk County

December 14, 2021 – EPC Business Meeting – Polk County

Jerah Sheets
Environmental Services Division

Iowa Department of Natural Resources

Environmental Protection Commission

ITEM 11 **DECISION**

TOPIC **Notice of Intended Action – Chapter 134 Underground Storage Tank Licensing and Certification Programs, Chapter 135 Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, and Chapter 136 Financial Responsibility for Underground Storage Tanks**

The Commission is requested to approve this Notice of Intended Action to update 567 Iowa Administrative Code (IAC) chapters 134, 135, and 136 to the 2015 federal underground storage tank (UST) rule revisions as contained in 40 Code of Federal Regulations (CFR) Parts 280 and 281. The rules are necessary for the Department to maintain its delegated state program approval (SPA) under the federal Resource Conservation and Recovery Act (RCRA) pursuant to Iowa Code section 455B.474(8). The proposed rules also update and remove outdated provisions, clean up code language, and revise leaking underground storage tank (LUST) rules to be consistent with current risk evaluation processes.

Attached for the Commission's review is a Notice of Intended Action as it applies to the following IAC chapters:

1. Chapter 567-134: amend
2. Chapter 567-135: amend
3. Chapter 567-136: amend

A summary of the revisions is provided here for the Commission's review:

IAC 567-134 ***Underground Storage Tank Licensing and Certification Programs.*** The proposed rule changes will amend this chapter by updating nomenclatures to Iowa Code (455B); update licensee application, training and renewal requirements; and clarify licensed professional duties and documentation requirements for work performed.

IAC 567-135 ***Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks.*** The federal UST rule revisions improve upon the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. The revisions will help prevent and detect UST petroleum releases, which are a leading source of groundwater contamination, often resulting in expensive cleanups. The primary provisions of the federal rule that have been incorporated into the proposed amendments include:

- regulation of certain tanks deferred by the 1988 federal regulations;
- disallowing flow restrictors in vent lines for new installations or when replacing equipment;
- requiring the closure of internally lined tanks that fail a lining inspection and cannot be repaired;
- requiring a demonstration that equipment is compatible with the fuel stored (addressing biofuel compatibility);
- requiring monthly and annual facility walkthrough inspections;
- requiring annual release detection equipment testing;
- requiring spill prevention equipment testing every three years;
- requiring overfill prevention equipment inspection every three years; and
- requiring containment sump testing every three years for those sumps used for piping interstitial monitoring.

The proposed amendments also remove outdated or unused regulations and references and update temporary tank closure and tank system corrosion protection requirements. In addition, the proposed rules include updated provisions to reflect what the Department has learned over the last 20 years of the risk-based corrective action (RBCA) evaluation process and remediation methods.

IAC 567-136 ***Financial Responsibility for Underground Storage Tanks.*** The proposed rule changes include modifications to definitions to clarify application of regulation and financial responsibility requirements.

Timeline for Rule-making

The Department has worked in close partnership with interested stakeholders since implementation of the 2015 federal regulations to update Iowa's regulations. Between December 2015 and December 2017, the Department hosted eight (8) stakeholder meetings. Attendees included representatives from the Iowa Petroleum Equipment Contractors Association (IPECA), FUELIowa (formerly Petroleum Marketers and Convenience Stores of Iowa), the Petroleum Marketers Management Insurance Company (PMMIC), environmental consultants, major convenience store chains, small business owners/operators, fuel supply companies, and the Department. Stakeholder involvement included creation of a representative Task Force to address technical issues and areas of concern. Several proposed changes raised by stakeholders were incorporated into this rule. Other changes could not be incorporated because they were deemed inconsistent with federal rules and would not allow the Department to meet the SPA requirements.

The proposed amendments represent rule language that is acceptable to EPA and is generally acceptable to the industry to maintain state-delegated program approval. This was confirmed in one last round of stakeholder meetings held in July and August 2020.

The Commission is asked to approve this Notice of Intended Action.

James Gastineau, Environmental Specialist Senior
Underground Storage Tank Section, Land Quality Bureau
Environmental Services Division

Administrative Rules
GOVERNOR'S OFFICE PRECLEARANCE FORM

Agency:	Environmental Protection Commission (Commission) / Department of Natural Resources (Department)
IAC Citation:	567 IAC Chapters 134, 135, and 136
Agency Contact:	Elaine Douskey, Underground Storage Tank (UST) Section Supervisor (515-725-8311)
Statutory Authority:	Iowa Code sections 455B.474 and 455B.474A
Preclearance Requested Review Deadline:	September 25, 2020

Purpose of Proposed Rule: The proposed rule is necessary to conform 567 Iowa Administrative Code chapters 134, 135, and 136 to recently enacted federal rules promulgated by the U.S. Environmental Protection Agency (EPA). The Commission must adopt rules consistent with EPA's rules in order for the Department to maintain its delegated state program pursuant to Iowa Code section 455B.474(8). The Department notes that Iowa Code section 455B.474A stipulates that the rules adopted by the Commission under section 455B.474 shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks (USTs). The proposed rules are consistent with this requirement.

More specifically, the purpose of the proposed amendments is to adopt the 2015 federal UST rule revisions as contained in 40 Code of Federal Regulations (CFR) Parts 280 and 281. The proposed amendments also update and remove outdated provisions, clean up code language, and revise leaking underground storage tank (LUST) rules to be consistent with current risk evaluation processes.

The federal UST rule revisions improve upon the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. The revisions will help prevent and detect UST petroleum releases, which are a leading source of groundwater contamination, often resulting in expensive cleanups. The primary provisions of the federal rule that have been incorporated into the proposed amendments include:

- regulation of certain tanks that were deferred by the 1988 regulations (i.e., emergency power generator tanks, airport hydrant fuel distribution systems, field-constructed tanks);
- disallowing flow restrictors in vent lines for new installations or when replacing equipment;
- requiring the closure of internally lined tanks that fail a lining inspection and cannot be repaired;
- requiring a demonstration that equipment is compatible with the fuel stored (addressing biofuel compatibility);
- monthly and annual facility walkthrough inspections;
- annual release detection equipment testing;
- spill prevention equipment testing every three years;
- overfill prevention equipment inspection every three years; and
- containment sump testing every three years of sumps used for piping interstitial monitoring.

Other minor revisions are included as part of the Department's five-year review process. The proposed amendments also remove outdated or unused regulations and references. Finally, some provisions have been updated to reflect what the Department has learned over the last 20 years of the risk-based corrective action (RBCA) evaluation process, remediation methods, tank temporary closure requirements, and tank system corrosion protection.

Need for Proposed Rule: The Department must adopt these proposed amendments in order to maintain the state of Iowa's UST program's primacy under the federal Resource Conservation and Recovery Act (RCRA). Subtitle I of RCRA establishes a federal program for the regulation of USTs and authorizes the EPA to approve state programs to operate in place of the federal requirements if those state programs have standards that are no less stringent than the federal requirements and provide adequate enforcement of compliance with those standards. States with approved UST programs have primary enforcement responsibility with respect to UST program requirements in their respective state. Iowa received state program approval (SPA) from EPA in 1995. However, in order to maintain authority to run the

program, Iowa is required to reapply for SPA, which includes documenting that state UST regulations meet the current federal standards. If Iowa's SPA is revoked, the state will no longer receive federal funding to operate the UST program (Iowa receives $1,200,000 in grants annually to administer the UST program) and UST owners and operators will be required to meet EPA standards with enforcement oversight by EPA, in addition to meeting existing state UST regulations.

The revisions included in the proposed amendments are mandated by new federal regulations (40 CFR Parts 280 and 281) regarding UST systems. This is the first major revision to the federal UST regulations since 1988. These revisions are needed because, while the 1988 UST regulations required UST system upgrades, the old rules did not address evaluation and maintenance of UST equipment, training for UST operators, inspections, or secondary containment. These latter provisions are requirements established in the federal Energy Policy Act of 2005.

Additionally, the Department is required to implement a five-year rules review plan to accomplish the requirements of Iowa Code section 17A.7(2). The goal of the review is to identify and eliminate rules of the agency that are outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies. The proposed amendments remove outdated or unused regulations and references. Some provisions have been updated to reflect what the Department has learned over the last 20 years of the RBCA evaluation process, remediation methods, tank temporary closure requirements, and tank system corrosion protection.

If the Department does not adopt the proposed amendments Iowa's rules will be inconsistent with federal regulations. If state UST regulations are not equivalent to EPA rules, Iowa may lose its SPA, which in turn would require UST facility owners to meet federal requirements in addition to existing state requirements. The inconsistency in two sets of rules could cause regulatory uncertainty and confusion for affected facilities and owners.

Summary of Informal Rule making Activities related to the Proposed Rule (e.g., stakeholder input): The Department has worked in close partnership with interested stakeholders for years while developing this proposed rule.

Between December 2015 and December 2017 the Department hosted eight stakeholder meetings. Attendees included representatives from the Iowa Petroleum Equipment Contractors Association (IPECA), FUELIowa (formerly Petroleum Marketers and Convenience Stores of Iowa), the Petroleum Marketers Management Insurance Company (PMMIC), environmental consultants, major convenience store chains, small business owners/operators, fuel supply companies, and the Department. A representative Task Force was appointed by the stakeholder group to address technical issues and areas of concern. Seven Task Force meetings were held between September 2016 and June 2017.

This proposed rulemaking has been developed with, and submitted for review and comment to the following organizations: Barker Lemar Engineering Consultants, Inc.; CASEYS Marketing Company; Cobb Oil Company; FUELIowa; GROWMARK; Hy-Vee, Inc.; Key Cooperative; Kum & Go, L.C.; Kwik Shop; Kwik Trip, Inc.; McDermott Oil Company; MidAmerican Energy; Pipeco, Inc.; PMMIC; Reif Oil; River Valley Cooperative; Seneca Companies; Stantec Consulting Services, Inc.; United Contracting Services; United Farmers; Iowa Comprehensive Petroleum Underground Storage Tank Fund Board; and W&H Cooperative. Several proposed changes raised by stakeholders were incorporated into this proposal. Some proposed changes could not be incorporated because they were deemed inconsistent with federal rules.

The Department and stakeholders came to a basic agreement for proposed rule changes. The 2017 proposed amendments addressed the industry's primary concerns on the testing of secondary containment sumps, spill buckets, overfill devices, and leak detection. Ideas on Iowa's proposed changes were provided to EPA for input on whether the proposed amendments would meet SPA requirements. EPA indicated Iowa's initially-proposed modified rule, which included a delay in implementation date, would not meet the SPA requirements.

In light of this notification from EPA, eleven additional meetings with industry representatives were held between October 2017 and October 2019 to review options and to draft amendment language. Additional proposals were

submitted to EPA for review to determine which options would be acceptable in order for the state to receive program approval. Generally, most alternatives were considered not acceptable by EPA. As such, the Department continued to revise the proposed amendments to address both EPA's and stakeholders' comments.

The proposed amendments represent rule language that is acceptable to EPA and is generally acceptable to the industry to achieve state-delegated program approval from EPA. This was confirmed in one last round of stakeholder meetings held in July and August 2020. FUELIowa, however, still expressed concern regarding containment testing and lack of available testing methods. They believe the commonly used hydrotest method may lead to unintended petroleum releases of hazardous waste from the water placed into the containment to facilitate testing. FUELIowa requested the Department be open to alternative test methods under development that could be equally protective of the environment and public safety. The Department is committed to working with FUELIowa and other stakeholders on this issue during implementation of these rules. Although also in agreement with adopting federal provisions, PMMIC expressed concerns with Chapter 134 regarding compliance inspector certification qualifications. PMMIC indicated the Chapter could be reorganized to add clarity, and requested the Department look at equivalent experience factors other than working a required number of years in the profession. The Department is committed to working with PMMIC and other stakeholders under a separate rule-making specific to UST professional licensing requirements in Chapter 134.

Administrative Rules
JOBS IMPACT STATEMENT

1. BACKGROUND INFORMATION

Agency:	Environmental Protection Commission (Commission) / Department of Natural Resources (Department)
IAC Citation:	567 IAC Chapters 134, 135, and 136
Agency Contact:	Elaine Douskey, UST Section Supervisor (515-725-8311)
Statutory Authority:	Iowa Code sections 455B.474 and 455B.474A
Objective:	The purpose of the proposed amendments is to adopt the 2015 federal underground storage tank (UST) rule revisions as contained in 40 Code of Federal Regulations Parts 280 and 281. The federal UST rule revisions improve upon the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. The revisions will help prevent and detect UST petroleum releases, which are a leading source of groundwater contamination, often resulting in expensive cleanups. The proposed amendments also update and remove outdated provisions, clean up code language, and revise leaking underground storage tank (LUST) rules to be consistent with current risk evaluation processes. The Department must adopt these proposed amendments in order to maintain the state of Iowa's UST program's primacy under the federal Resource Conservation and Recovery Act (RCRA). Subtitle I of RCRA establishes a federal program for the regulation of USTs and authorizes the U.S. Environmental Protection Agency (EPA) to approve state programs to operate in place of the federal requirements if those state programs have standards that are no less stringent than the federal requirements and provide adequate enforcement of compliance with those standards. States with approved UST programs have primary enforcement responsibility with respect to UST program requirements in their respective state. Iowa received state program approval (SPA) from EPA in 1995. However, in order to maintain authority to run the program, Iowa is required to reapply for SPA, which includes documenting that state UST regulations meet the current federal standards. If Iowa's SPA is revoked, the state will no longer receive federal funding to operate the UST program (Iowa receives $1,200,000 in grants annually to administer the UST program) and UST owners and operators will be required to meet EPA

	standards with enforcement oversight by EPA, in addition to meeting existing state UST regulations. Additionally, the Department is required to implement a five-year rules review plan to accomplish the requirements of Iowa Code section 17A.7(2). The goal of the review is to identify and eliminate rules of the agency that are outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies. The proposed amendments remove outdated or unused regulations and references. Some provisions have been updated to reflect what the Department has learned over the last 20 years of the risk-based corrective action evaluation process, remediation methods, tank temporary closure requirements, and tank system corrosion protection. If the Department does not adopt the proposed amendments, Iowa's rules will be inconsistent with federal regulations. If state UST regulations are not equivalent to EPA rules, Iowa may lose its primacy, which in turn would require UST facility owners to meet federal requirements in addition to existing state requirements. The inconsistency in two sets of rules could cause regulatory uncertainty and confusion for affected facilities and owners.
Summary:	The proposed rule is necessary to conform 567 Iowa Administrative Code chapters 134, 135, and 136 to recently enacted federal rules promulgated by the EPA. *See* 40 Code of Federal Regulations Parts 280 and 281. The Commission must adopt rules consistent with EPA's rules in order for the Department to maintain its delegated state program. The federal UST rule revisions improve upon the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. The revisions will help prevent and detect UST petroleum releases, which are a leading source of groundwater contamination, often resulting in expensive cleanups. The primary provisions of the federal rule that have been incorporated into the proposed amendments include: • regulation of certain tanks that were deferred by the 1988 regulations (i.e., emergency power generator tanks, airport hydrant fuel distribution systems, field-constructed tanks); • disallowing flow restrictors in vent lines for new installations or when replacing equipment; • requiring the closure of internally lined tanks that fail a lining inspection and cannot be repaired; • requiring a demonstration that equipment is compatible with the fuel stored (addressing biofuel compatibility); • monthly and annual facility walkthrough inspections; • annual release detection equipment testing; • spill prevention equipment testing every three years; • overfill prevention equipment inspection every three years; and • containment sump testing every three years of sumps used for piping interstitial monitoring. The proposed amendments also update and remove outdated provisions, clean up code language, and revise LUST rules to be consistent with current risk evaluation processes.

2. JOB IMPACT ANALYSIS

☐ *Fill in this box if impact meets these criteria:*

☐ No Job Impact on private sector jobs and employment opportunities in the State. *(If you make this determination, you must include the following statement in the preamble to the rule: "After analysis and review of this rulemaking, no impact on jobs has been found.")*

Explanation:

☒ *Fill in this box if impact meets either of these criteria:*

☒ Positive Job Impact on private sector jobs and employment opportunities in the State.

☒ Negative Job Impact on private sector jobs and employment opportunities in the State.

Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities:

There are approximately 2,300 regulated, private-sector UST facilities in Iowa. The job impact to each facility cannot be uniformly determined. This is because some of the proposed amendments may not be applicable to all facilities and are highly dependent upon the type of equipment installed at a given facility (i.e., steel tanks vs. fiberglass tanks; double-walled vs. single-walled tanks, piping, and sumps; and the various leak detection and overfill equipment used at different facilities). As an example, one of the key provisions – testing of sump containments –applies to only about 23% of Iowa's regulated UST facilities. Also, the size of a facility/business will affect cost and the need for additional employees to implement the proposed rule, or conversely the ability to economize, or defray costs.

Both minor positive and minor negative impacts on private sector jobs and employment opportunities in the State are anticipated as a result of the proposed rule. Additionally, if the proposed rule is not adopted, facilities will be required to comply with federal standards and separate state standards. Therefore, the effect on jobs could be considered neutral.

Potential positive job impacts: Some job opportunities will open to UST professionals and companies that conduct the required maintenance, testing, and inspections at UST facilities. Early indications are that the need for testing and inspections will exceed the number of currently-available licensed testers/inspectors. However, because this work will take place over several years (testing will generally be required every three years), additional job opportunities are expected to be minimal. UST facility owners may seek to hire new employees as trained operators, or to conduct proposed monthly and annual walkthrough inspections, if existing personnel cannot adequately meet the requirement. As a result of the new testing and inspection requirements, problems with equipment may be found at some facilities. This could indirectly lead to additional work for UST equipment and service companies to complete repairs and replacements.

Potential negative job impacts: According to a study commissioned by the EPA* on the potential costs, benefits, and other impacts of the federal regulations, very minimal job impact is anticipated. The study estimates that, across the entire United States, approximately 19 firms might exit the market if they cannot pass costs through to customers. This number represents less than 0.1 percent of the total universe of 148,000 facilities nationwide. The Department notes that FUELIowa has questioned the validity of the EPA's analysis in this area.

FUELIowa indicated costs to implement the proposed rules may negatively affect some of their members, particularly small businesses. Their primary concern is with the test methods available to their members and the potential cost of equipment repairs, equipment replacement, and site remediation if available test methods damage UST equipment during testing and inspections. The Department notes regardless of adoption of the proposed rule, expenses are incurred under current regulations whenever damaged equipment is found and needs repair. FUELIowa, though, expressed concern that this testing may damage equipment that would otherwise be functional.

According to the EPA study, the main impact of this rule making will be an overall decrease in the number and severity of gasoline and diesel releases into the environment. There would be an accompanying decrease in the costs and job opportunities associated with environmental cleanups of contamination.

*U.S. Environmental Protection Agency, Office of Underground Storage Tanks. Assessment of the Potential Costs,

Benefits, and Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations. April 2015. Accessed at: https://www.epa.gov/sites/production/files/2015-07/documents/regs2015-ria.pdf.

Categories of jobs and employment opportunities that are affected by the proposed rule: Those affected by the proposed rule include owners and operators of USTs; convenience store employees; service station attendants; state, county and local municipalities; petroleum equipment and service industries; and environmental consultants.

Number of jobs or potential job opportunities: Number of jobs or potential job opportunities cannot be determined at this time but are expected to be minimal.

Regions of the state affected: All regions of the state will be similarly affected.

Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.") Not possible to determine.

3. COST-BENEFIT ANALYSIS

The Agency has taken steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule. See the following Cost-Benefit Analysis:

There is no less costly or less intrusive method for achieving the purpose of the proposed rule. Due to the federal mandate, UST facilities must comply with Subtitle I of RCRA regardless of whether the state of Iowa adopts the proposed rule. By adopting the rule, the Department becomes the delegated authority for implementing the UST program and the Department can provide compliance assistance and outreach to owners and operators of affected facilities.

The EPA completed a comprehensive analysis of the costs and benefits of the revisions to the federal regulations. In their analysis, EPA considered two other regulatory alternatives – one more stringent than the selected option, one less stringent. In addition to the costs of compliance, the study takes into consideration the avoided costs generated by avoided releases and reduction in severity of releases; avoided product [fuel] losses; and avoided vapor intrusion damages. The analysis quantifies, but does not put a monetary value on, avoided groundwater impacts. The EPA study qualitatively addresses human health benefits and ecological impacts.

*U.S. Environmental Protection Agency, Office of Underground Storage Tanks. Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations. April 2015. Accessed at: https://www.epa.gov/sites/production/files/2015-07/documents/regs2015-ria.pdf.

4. FISCAL IMPACT

Please see the Fiscal Impact Statement for an identification and description of costs the Department anticipates state agencies, local governments, the public, and the regulated entities, including regulated businesses and self-employed individuals, will incur from implementing and complying with the proposed rule.

5. PREAMBLE

The information collected and included in this Jobs Impact Statement must be included in the preamble of the proposed rule, written in paragraph form. For rules that have no impact on jobs (see the first box in number 2 above), the following statement must be included in the preamble: "After analysis and review of this rulemaking, no impact on jobs has been found."

Administrative Rule Fiscal Impact Statement

Agency: Environmental Protection Commission (Commission) /Department of Natural Resources (Department)
IAC Citation: 567 IAC Chapters 134, 135, and 136
Agency Contact: Elaine Douskey, UST Section Supervisor (515-725-8311)

Summary of the Rule: The proposed rule is necessary to conform 567 Iowa Administrative Code chapters 134, 135, and 136 to recently enacted federal rules promulgated by the U.S. Environmental Protection Agency (EPA). The Commission must adopt rules consistent with EPA's rules in order for the Department to maintain its delegated state program.

The purpose of the proposed amendments is to adopt the 2015 federal underground storage tank (UST) rule revisions (40 Code of Federal Regulations Parts 280 and 281). The proposed amendments also update and remove outdated provisions, clean up code language, and revise leaking underground storage tank (LUST) rules to be consistent with current risk evaluation processes.

The federal UST rule revisions improve upon the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. The revisions will help prevent and detect UST petroleum releases, which are a leading source of groundwater contamination, often resulting in expensive cleanups. The primary provisions of the federal rule that have been incorporated into the proposed amendments include:

- regulation of certain tanks that were deferred by the 1988 regulations (i.e., emergency power generator tanks, airport hydrant fuel distribution systems, field-constructed tanks);
- disallowing flow restrictors in vent lines for new installations or when replacing equipment;
- requiring the closure of internally lined tanks that fail a lining inspection and cannot be repaired;
- requiring a demonstration that equipment is compatible with the fuel stored (addressing biofuel compatibility);
- monthly and annual facility walkthrough inspections;
- annual release detection equipment testing;
- spill prevention equipment testing every three years;
- overfill prevention equipment inspection every three years; and
- containment sump testing every three years of sumps used for piping interstitial monitoring.

Other minor revisions are included as part of the Department's five-year review process. The proposed amendments remove outdated or unused regulations and references. Some provisions have been updated to reflect what the Department has learned over the last 20 years of the risk-based corrective action evaluation process, remediation methods, tank temporary closure requirements, and tank system corrosion protection.

☐ *Fill in this box if impact meets these criteria:*

☒ No Fiscal Impact to the State.

☐ Fiscal Impact of less than $100,000 annually or $500,000 over 5 years.

☐ Fiscal Impact cannot be determined.

Brief Explanation: Administration of the rules will be managed under existing budget and resources

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY 2020)	Year 2 (FY 2021)
Revenue by Each Source:		
GENERAL FUND	$0	$0
FEDERAL FUNDS	$0	$0
Other (specify)	$0	$0
TOTAL REVENUE	$0	$0
Expenditures:		
GENERAL FUND	$0	$0
FEDERAL FUNDS	$0	$0
Other (specify) Air Contaminant Fee	$0	$0
TOTAL EXPENDITURES	$0	$0
NET IMPACT		

☒ This rule is required by State law or Federal mandate.
Please identify the state or federal law:
Iowa Code sections 455B.474 and 455B.474A; Subtitle I of the Resource Conservation and Recovery Act (RCRA), as codified in 40 Code of Federal Regulations Parts 280 and 281.

☐ Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

☒ Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
The Department will use existing budget and resources to implement the proposed rule.

Fiscal impact to persons affected by the rule: There are approximately 2,300 regulated, private-sector UST facilities in Iowa and approximately 250 government facilities (federal, Indian Trust, state, county, municipal). The fiscal impact to each facility cannot be uniformly determined. This is because one of the proposed provisions may not be applicable to all facilities and are highly dependent upon the type of equipment installed at a given facility (i.e., steel tanks vs. fiberglass tanks; double-walled vs. single-walled tanks, piping, and sumps; and the various leak detection and overfill equipment used at different facilities). As an example, one of the key provisions – testing of sump containments – applies to UST systems installed after November 28, 2007 (about 23% of Iowa's regulated UST facilities). Also, the size of a facility/business will affect its cost and the need for additional employees to implement the proposed rule, or conversely the ability to economize, or defray costs.

The EPA completed a comprehensive analysis of the costs and benefits of the revisions to the federal regulations.* The study takes into consideration not only the costs of compliance, but also the avoided costs generated by preventing releases and the reduction in severity of releases; avoided product [fuel] losses; and avoided vapor intrusion damages. EPA determined the average annual compliance cost to be $715 per facility. This was calculated by dividing the total cost to implement the final regulation by the total number of conventional facilities (motor fuel retailers) and emergency generator tanks. The Department notes that at least one stakeholder (FUELIowa) has questioned the validity of the EPA's analysis.

Because EPA's cost estimate was based on an average of all retail facilities, the Department and stakeholders believed this was a low estimate. Therefore, a more relevant estimation was determined based on the four major new provisions which were identified as concerns by stakeholders – namely 1) monthly and annual walkthrough

inspections; 2) periodic (3-yr) inspections of overfill equipment; 3) periodic (3-yr) testing of containment sumps and spill prevention equipment; and 4) annual test of the operability of leak detection equipment. In other words, what is the estimated cost for an average facility to implement the four key provisions? For this estimation an average facility was assumed to have three USTs with four dispensers.

The Department used EPA's unit costs (cost per rule provision), to recalculate an estimation. Additionally, the Department requested information from stakeholders. Based on estimates provided by Iowa businesses (FUELIowa, Casey's, Kwik Trip, Tanknology), and including EPA's costs, the average estimated annual cost for a conventional facility to comply with the proposed new rule was determined to be $1,411**.** Estimates provided ranged from $1,147 to $4,053 per facility per year. Costs will be higher for larger facilities with multiple tanks and dispensers (e.g., truck stops). In Iowa, truck stop facilities tend to be three times larger than a corner gas station; annual costs could triple. Conversely, about 77% of the regulated facilities will not be required to complete the containment testing, resulting in lower costs for many facilities.

The Department also reviewed rule making proceedings from nearby states. Missouri referenced EPA's analysis for their fiscal impact estimate - $715 annually for a conventional facility. Minnesota also accepted EPA's cost/benefit analysis. Oklahoma indicated that "…there will be minimal adverse economic impact upon the majority of affected parties." Wisconsin's fiscal impact statement reads, "In nearly all cases, the costs are anticipated to be insignificant, and in the aggregate, will not have a major financial impact on the state's expenditures for the program or the expenses of Wisconsin businesses." Kansas completed an extensive economic impact analysis, concluding that the yearly cost to implement all new regulations in the state would be $1,027,403.00 [an average annual cost of $513 per facility]; however, when considering only a subset of their facilities - only those that would have to implement testing of sumps and under-dispenser containment (UDC), the average annual cost rose to $1,583 per facility where sump/UDC testing would be required. Nebraska is in the process of developing their state rules to implement federal regulations – fiscal impact information was not available.

The Department believes costs to comply with the new regulations may decline with time. For example, the first cycle of testing will identify faulty equipment at some facilities which will require repair or replacement. The fixed or newer equipment is expected to be durable and operable through subsequent testing cycles. Additionally, with time it is expected new testing technologies will be developed which are more efficient and economical. The Department has also looked at ways to reduce costs to owners. For example, under certain conditions, the use of a low-level hydrostatic test method for containment testing will be accepted, which is less costly than the standard full volume hydrostatic tests. Additionally, the Department will allow the normal, currently required biennial compliance inspection to serve as the annual walkthrough inspection during the biennial year. Regarding hydrostatic testing of containment sumps, the Department's UST Section worked with the Department's Wastewater program on alternative wastewater disposal options (e.g., General Permit No. 8 was developed to allow for test water disposal onto the ground surface or to surface waters under certain conditions).

Certain additional potential savings were not factored into these estimates (e.g., avoided costs of environmental assessments and remediation, avoided cost due to losses of fuel product). However, based on expenditure data from the State's UST 'cleanup' Fund, an average cost for assessment and remediation of a petroleum release at a site is approximately $62,000. Remediation costs in a couple of cases have reached $1M (the UST Fund cap). Since the program's inception in 1989, the UST 'cleanup' Fund has spent just over $285M on assessments and cleanup of 4,560 petroleum releases across Iowa. Iowa regulations also require facilities to maintain pollution liability insurance. In the event a claim is filed due to a petroleum release to the environment, typical deductible amounts are $5,000 and $10,000, depending on the policy. Besides the premium, this is the 'out-of-pocket' expense to an owner should a release be identified and require investigation or cleanup. The purpose of the proposed rule provisions is to bolster release prevention, detection, and early response to identified petroleum releases, which in turn will reduce costs related to insurance deductibles, emergency response, assessment, and cleanup.

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Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6): Counties and other local governments that own and operate UST will be required to comply with the proposed rule. The fiscal impact to counties and local governments will be the same as described above.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 134, "Underground Storage Tank Licensing and Certification Programs", Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks", and Chapter 136, "Financial Responsibility for Underground Storage Tanks" Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455B.474.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.474 and .474A.

Purpose and Summary

The proposed rule is necessary to conform chapters 134, 135, and 136 to recently enacted federal rules promulgated by the U.S. Environmental Protection Agency (EPA). The Commission must adopt rules consistent with EPA's rules in order for the Department of Natural Resources (Department) to maintain its delegated state program.

Specifically, the purpose of the proposed amendments is to adopt the 2015 federal Underground Storage Tank (UST) rule revisions contained in 40 Code of Federal Regulations Parts 280 and 281. The proposed amendments also update and remove outdated provisions, clean up code language, and revise leaking underground storage tank (LUST) rules to be consistent with current risk evaluation processes.

The federal UST rule revisions improve upon the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. The revisions will help prevent and detect UST petroleum releases, which are a leading source of groundwater contamination, often resulting in expensive cleanups. The primary provisions of the federal rule that have been incorporated into the proposed amendments include:

- regulation of certain tanks that were deferred by the 1988 regulations (i.e., emergency power

generator tanks, airport hydrant fuel distribution systems, field-constructed tanks);

- disallowing flow restrictors in vent lines for new installations or when replacing equipment;
- requiring the closure of internally lined tanks that fail a lining inspection and cannot be repaired;
- requiring a demonstration that equipment is compatible with the fuel stored (addressing biofuel compatibility);
- monthly and annual facility walkthrough inspections;
- annual release detection equipment testing;
- spill prevention equipment testing every three years;
- overfill prevention equipment inspection every three years; and
- containment sump testing every three years of sumps used for piping interstitial monitoring.

Other minor revisions are included as part of the Department's five-year review process. The proposed amendments remove outdated or unused regulations and references. Some provisions have been updated to reflect what the Department has learned over the last 20 years of the risk-based corrective action evaluation process, remediation methods, tank temporary closure requirements, and tank system corrosion protection.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

There will be a fiscal impact to industry but it cannot be uniformly determined. EPA estimates an average annual compliance cost to be $715 per facility. However, the Department and stakeholders jointly estimate an annual cost per facility between $1,147 to $4,053 depending on a facility's size, equipment, location, and frequency of inspections. More information of these estimates is in the Department's fiscal impact statement.

The Department believes costs to comply with the new regulations may decline with time. For example, the first cycle of testing will identify faulty equipment at some facilities which will require repair or replacement. The fixed or newer equipment is expected to be durable and operable through subsequent testing

cycles. Additionally, with time it is expected new testing technologies will be developed which are more efficient and economical.

Jobs Impact

Both minor positive and minor negative impacts on private sector jobs and employment opportunities in the State are anticipated as a result of the proposed rule. Additionally, if the proposed rule is not adopted, facilities will be required to comply with federal standards and separate state standards. Therefore, the effect on jobs could be considered neutral. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561 Iowa Administrative Code chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 11, 2020. Comments should be directed to:

James Gastineau
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319
email: james.gastineau@dnr.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held via conference call as follows. Persons who wish to attend the conference call should contact James Gastineau via email at james.gastineau@dnr.iowa.gov. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to James Gastineau prior to the hearing to facilitate an orderly hearing.

December 8, 2020	Video/conference call
10 to 11 a.m.	Wallace State Office Building

December 9, 2020 1 p.m. to 2 p.m.	Video/conference call Wallace State Office Building
December 10, 2020 2 p.m. to 3 p.m.	Video/conference call Wallace State Office Building

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

ITEM 1. Amend rule 567—134.1(455G) parenthetical implementation statute, as follows:

567—134.1 (~~455G~~455B) Definition.

ITEM 2. Amend rule 567—134.2(455G) parenthetical implementation statute, as follows:

567—134.2 (~~455G~~455B) Certification requirements.

ITEM 3. Amend subrule 134.2(1) as follows:

134.2(1) A groundwater professional must be certified as provided in 134.3(~~455G~~455B) before engaging in activities described in 134.1(~~455G~~455B), except that a person engaging in activities described in 134.1(~~455G~~455B) need not be certified if that person is under direct supervision of a certified groundwater professional when engaging in such activities.

ITEM 4. Amend subrule 134.2(3) as follows:

134.2(3) In order to be certified as a groundwater professional, the applicant must complete the two-day risk-based correction action (RBCA) course or department-approved course and pass a certification examination offered or authorized by the department.

a. An applicant who fails an initial examination may take a second examination.

b. Failure of the second examination will result in termination of the application. A person may reapply for groundwater professional certification. The applicant must complete a regularly scheduled course of instruction before retaking the certification examination.

c. Professional engineers who qualify for an exemption from taking the certification examination under subrule 134.3(6) must attend the RBCA initial course of instruction or department-approved course in order to be certified.

ITEM 5. Amend rule 567—134.3(455G) parenthetical implementation statute, as follows:

567—134.3 (~~455G~~455B) Certification procedure.

ITEM 6. Amend subrule 134.3(1) as follows:

134.3(1) *Application.* Application for certification shall be made by completing a form provided by the department and submitting evidence of meeting the requirements found in rule 134.2(~~455G~~455B)(i.e., copy of certificate, license, description of experience and training).

ITEM 7. Amend subrule 134.3(6) as follows:

134.3(6) *Exemption from examination.* The department may provide for an exemption from the certification examination requirements for a professional engineer registered pursuant to Iowa Code chapter 542B upon submission of sufficient proof of exemption to the ~~Iowa comprehensive petroleum underground storage tank fund board as provided in Iowa Code section 455G.18(8)~~department. The person must be qualified in the field of

geotechnical, hydrological, environmental, groundwater, or hydrogeological engineering. A groundwater professional exempted under this provision must meet the continuing education requirements of subrule 134.3(5).

ITEM 8. Amend rule 567—134.4(455G) parenthetical implementation statute, as follows:

567—134.4 (~~455G~~455B) Suspension, revocation and denial of certification.

ITEM 9. Amend subrule 134.4(1) as follows:

134.4(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 persons for certification in Iowa as groundwater professionals. The department intends to rely on written standards of professional and ethical conduct and competency which are applicable to persons who qualify for certification by virtue of certification by or membership in a professional organization ~~or state licensure as provided in Iowa Code section 455G.18(2)~~.

ITEM 10. Amend paragraph **134.4(2)"d"** as follows:

d. Insufficient proof of qualifications required under rule 134.2(~~455G~~455B).

ITEM 11. Amend paragraph **134.4(2)"g"** as follows:

g. Default on an obligation owed to or collected by the state as provided in Iowa Code section ~~421.17(34)"*e.*"~~ 421.17(27)"*e*".

ITEM 12. Amend paragraph **134.4(3)"f"** as follows:

f. Material misstatement of facts or misrepresentation of information required to be provided pursuant to Iowa Code ~~chapters 455G and~~ section 455B, division IV, part 8.

ITEM 13. Amend rule 567—134.5(455B) as follows:

567—134.5 (~~455G~~455B) Penalty. A groundwater professional who fails to obtain certification with the department of natural resources as required in this chapter is subject to a civil penalty of $50. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional certification revoked.

These rules are intended to implement Iowa Code section ~~455G.18~~455B.474(9).

ITEM 14. Amend rule 567—134.7(455B) as follows:

567—134.7 (455B) Certification requirements for UST compliance inspectors. A person retained by an owner or operator of ~~a~~an UST facility for the purpose of establishing compliance with ~~the annual~~an UST compliance inspection required by the department under 567—135.20(455B) must hold a current UST compliance inspector certification issued by the department. Inspector certification will be issued by the department only to a person who:

1. ~~Is an~~Has met and continues to meet Iowa-licensed UST installer or installation inspector requirements under ~~591—Chapter 15~~ 567--134.24 or 134.27(455B), except that the requirement as set forth under ~~591—subrule 15.3(4)~~ 567--134.23(455B) shall not be applicable to a certified UST compliance inspector.

2. Attends the required training approved by the department as provided in 567—134.10(455B).

3. Achieves a passing grade of 85 percent on a certification examination administered or approved by the department as provided in 567—134.10(455B).

4. Submits an accurate and complete application.

5. Is not found to be in violation of this chapter and has not had a certification revoked by the department pursuant to 567—134.16(455B) ~~or by the underground storage tank fund board pursuant to 591—Chapter 15~~.

ITEM 15. Rescind and reserve rule **567—134.8(455B)**.

ITEM 16. Amend subrule 134.10(1) as follows:

134.10(1) Prior to taking the compliance inspector examination, the applicant must~~:~~

~~*a.* Complete the U.S. EPA UST Web-based training modules: "Introduction to the Underground Storage Tanks (UST) Program" and "Basic UST Inspector Training" with a minimum passing grade of 85 percent.~~

~~*b.* A~~attend the department's inspector training course or designated approved course.

ITEM 17. Amend subrule 134.11(1) as follows:

134.11(1) *Renewal period.* Certification shall be for a two-year period and must be renewed by January 1 of each odd-numbered year~~, beginning January 1, 2009~~. Applications for renewal must be submitted on a form provided by the department and no later than ~~60~~30 days prior to the expiration date. If a certified inspector fails to renew the certification by the expiration date, the department may grant, upon a showing of good cause, a 30-day grace period during which the applicant may submit the application and payment of the renewal fee as provided in 134.9(3).

ITEM 18. Amend subrule 134.11(3) as follows:

134.11(3) *Minimum inspections.* In order to renew certification, an inspector must have conducted at least ~~25~~12 compliance inspections ~~each year~~in the past two years.

ITEM 19. Amend subrule 134.14(3) as follows:

134.14(3) Any evidence of violations or deficiencies observed during the inspection must be photographed using a digital camera~~ with at least a 1-2 megapixel resolution~~. The digital photographs must be submitted as part of the electronic inspection report and maintained by the inspector for five years as part of the inspector's records.

ITEM 20. Amend subrule 134.14(5), last sentence, as follows:

Any problems observed during the inspection must be photographed using a digital camera~~ with at least a 1-2 megapixel resolution~~.

ITEM 21. Amend paragraph **134.16(1)"e"** as follows:

e. The revocation of a certification as an installer or installation inspector under ~~591—Chapter 15~~rules 567--134.24 or 134.27(455B).

ITEM 22. Amend rule **567—134.17(455B)**, definition of "Modification," as follows:

"*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."

ITEM 23. Amend rule **567—134.17(455B)**, definition of "Removal," as follows:

"*Removal*" means the process of removing and disposing of an underground storage tank system no longer in service or the process of abandoning an underground storage tank system in place, in accordance with rule 567—~~135.9~~135.15(455B).

ITEM 24. Amend rule **567—134.17(455B)**, definition of "Underground storage tank professional," as follows:

"Underground storage tank professional" or *"UST professional"* means an individual licensed by the department under Part C of this chapter. The licensing program includes underground storage tank system installation, installation inspection, UST system testing, tank lining, cathodic protection installation/inspection, and UST removal. The license issued will list the type of work the individual is licensed to perform.

ITEM 25. Amend rule **567—134.17(455B)**, definition of "Underground storage tank system," as follows:

"*Underground storage tank system*" or "*UST system*" means a tank or tanks and associated piping intended to contain and dispense ~~petroleum products~~ regulated substances and for which proof of financial responsibility is required.~~, or on a date definite will be required to be maintained pursuant to the Federal Resource Conservation and Recovery Act, 40 CFR 280, and the regulations in effect on December 31, 1994, adopted pursuant to that Act or successor Acts or amendments.~~

ITEM 26. Amend rule 567—134.18(455B) as follows:

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 567—134.17(455B) are exempt from licensure under Part C of this chapter.

ITEM 27. Amend rule 567—134.19(455B) as follows:

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~~Licenses shall be issued and renewed on a two-year calendar basis, beginning January 1~~, 2011~~ on the odd-numbered years. 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.

ITEM 28. Amend subrule 134.19(1) as follows:

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~~.~~; and

f. Installation inspectors.

ITEM 29. Amend subrule 134.19(5), introductory paragraph, as follows:

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 August 19, 2009, to upgrade their environmental liability insurance.~~

ITEM 30. Amend subrule 134.19(7), introductory paragraph, as follows:

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~~eight 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.

ITEM 31. Amend subrule 134.20(1) as follows:

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~~December 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~~December 1 deadline, but before the January 1 expiration date, will be accepted and will require an additional $50 late fee.

ITEM 32. Amend subrule 134.24(3) as follows:

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.

a. Notification. The licensed installer is responsible for ensuring that all local installation permits and notice requirements are satisfied.

b. Work performed.~~Tank~~ UST system installation includes all work associated with the placement of the tanks, ~~pipes~~piping, pumps, dispensers, gauging systems, monitoring systems, corrosion protection, containment sumps, spill and overfill devices, and ancillary systems which, if installed incorrectly, could cause or delay detection of a leak. ~~Tank i~~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.

c. Testing of UST Equipment. Spill prevention equipment, containment sumps and UDC at new installations must be tested to ensure the equipment is liquid tight before the UST system is placed into service. Acceptable test methods include vacuum, pressure or liquid testing used in accordance with requirements developed by the manufacturer, a code of practice such as PEI RP1200 or methods determined by the department to be no less protective of human health and the environment than the requirements listed in this section. Licensed

installers may also perform periodic testing of spill and overfill devices, containment sumps and UDC as required by 567—Chapter 135(455B).

d. Proof of training. 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.

ITEM 33. Amend subrule 134.24(4) as follows:

134.24(4) *Documentation of work performed.* Installing a new UST system or upgrading ~~a~~an UST system requires an installer to submit ~~a copy of DNR Form 148~~the department forms and testing documents applicable to the installation, signed by the owner, to the department no later than 30 days after the final 3rd party inspection or 30 days after completion if no inspection is required. 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.~~"*. Secondary containment testing performed at installation or to meet periodic testing requirements shall be recorded on the department's Secondary Containment Testing form. Test results shall be dated and signed by the licensed installer who performed the test.

ITEM 34. Amend subrule 134.25(2) as follows:

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.~~ *Responsibilities of testers.* The licensed tester is responsible for testing tanks, lines, leak detection systems, or monitoring systems as required by 567—Chapter 135 and this chapter. An owner, operator or an employee of an owner or operator performing leak detection or cathodic protection monitoring, as required by 567—Chapter 135, is not a tester. A tester license does not qualify an individual to perform replacements or repairs to an UST system.

a. 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.~~

b. A licensed tester may also perform periodic testing of spill and overfill devices, containment sumps and UDC as required by 567—Chapter 135(455B). Spill prevention equipment, containment sumps and UDC at new installations must be tested to ensure the equipment is liquid tight before the UST system is placed into service. Acceptable methods include vacuum, pressure or liquid testing used in accordance with requirements developed by the manufacturer, a code of practice such as PEI RP1200 or methods determined to by the department to be no less protective of human health and the environment than the requirements listed in this section.

ITEM 35. Renumber subrule **134.25(3)** as **134.25(4)**.

ITEM 36. Adopt the following **new** subrule(s) 134.25(3):

134.25(3) *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. The test results shall identify the tanks and piping tested, the test method employed, and the results of the test. Periodic testing shall be recorded on the department's Secondary Containment Testing form. Test results shall be dated and signed by the licensed tester who performed the tests.

ITEM 37. Amend rule 567—134.27(455B), introductory paragraph, as follows:

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~~two years 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 567—134.19(455B). Engineers, however, are not exempt from fulfilling the examination requirement.

ITEM 38. Amend paragraph **134.27(2)"c"** as follows:

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.

ITEM 39. Amend subrule **134.27(3)** as follows:

134.27(3) *Inspection*s *required.* Inspections are required when~~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~~ Inspections shall occur when the component is uncovered and replaced or repaired and during testing when required (i.e., piping replacement or repair) 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 sytem is backfilled.~~

a. An inspection shall occur before the tanks or piping are installed.

b. An inspection shall occur before the covering of tank or piping, when all tanks and piping 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.

c. A final inspection shall occur when all components are operational and the system has been covered, but before actual operation.

d. Whenever secondary containment (such as sumps or UDC) is installed, at least one inspection is required after the equipment is installed and before the system is backfilled.

ITEM 40. Rescind paragraph **135.1(3)"a"** and adopt the following **new** paragraph in lieu thereof:

a. The requirements of this chapter apply to all owners and operators of an UST system as defined in 135.2(455B) except as otherwise provided in paragraphs "b" and "c" of this subrule.

(1) Previously deferred UST systems. Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of these rules as follows:

1. Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet the requirements in 567--135.21(455B).

2. UST systems that store fuel solely for use by emergency power generators installed on or before November 28, 2007 must meet the requirements in 567--135.5(455B) by October 13, 2021.

3. UST systems that store fuel solely for use by emergency power generators installed after November 28, 2007, must meet all applicable requirements of this chapter at installation.

(2) Any UST system listed in paragraph "c" of this subrule must meet the requirements of 567--135.1(4).

ITEM 41. Amend paragraph **135.1(3)"b"**, introductory paragraph, as follows:

b. Exclusions. The following UST systems are excluded from the requirements of this chapter:

ITEM 42. Amend paragraph **135.1(3)"c"**, introductory paragraph, as follows:

c. ~~Deferrals~~Partial exclusions. Rules 567—135.3(455B), 567—135.4(455B), 567—135.5(455B), 567—135.6(455B), 567—135.15(455B) and ~~567—135.9(455B)~~ 567—135.21(455B) do not apply to any of the following types of UST systems:

ITEM 43. Rescind subparagraphs **135.1(3)"c"(4) and (5)** and adopt the following **new** subparagraph in lieu thereof:

(4) Aboveground storage tanks associated with:

1. Airport hydrant fuel distribution systems regulated under 567-135.21(455B); and

2. UST systems with field-constructed tanks regulated under 567-135.21(455B).

ITEM 44. Rescind paragraph **135.1(3)"d"** and reletter the following paragraph.

ITEM 45. Amend subrule **135.1(4)**, introductory paragraph, as follows:

135.1(4) ~~Interim prohibition for deferred UST systems.~~*Installation requirements for partially excluded UST systems.*

ITEM 46. Amend paragraph **135.1(4)"a"** as follows:

a. ~~No person may~~Owners and operators must install ~~a~~an UST system listed in 135.1(3)*"c"*(1) through (3) ~~for the purpose of~~ storing regulated substances ~~unless the UST system~~ (whether of single- or double-wall construction) that meets the following requirements:

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of ~~noncorrodible~~ non-corrodible material, steel clad with a ~~noncorrodible~~ non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

ITEM 47. Rescind 'NOTE' in subrule 135.1(4) and adopt the following **new** 'NOTE' in lieu thereof:

NOTE: The following codes of practice may be used as guidance for complying with this section:

- NACE International Standard RP -02-85, "Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";
- NACE International Standard Practice SP 0169, "Control of External Corrosion on Metallic Buried, Partially Buried, Underground or Submerged Metallic Piping Systems";
- American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or
- Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

ITEM 48. Adopt the following **new** definition of "airport hydrant fuel distribution system" in rule **567—135.2(455B)**:

"*Airport hydrant fuel distribution system*" (also called airport hydrant system) means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

ITEM 49. Amend rule **567—135.2(455B)**, definition of "Asbestos-cement pipe," as follows:

"*Asbestos-cement pipe*" (AC refers to asbestos-cement) means a pipe or conduit constructed of asbestos fiber~~,~~ and Portland cement, ~~and water,~~ which can be used to transport water.

ITEM 50. Adopt the following **new** definition of "Biodiesel" in rule **567—135.2(455B)**:

"*Biodiesel*" means a renewable fuel comprised of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, that is blended with petroleum-based diesel fuel, which meets the standards provided in section 214A.2 of Iowa Code.

ITEM 51. Amend rule **567—135.2(455B)**, definition of "CERCLA," as follows:

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

ITEM 52. Amend rule **567—135.2(455B)**, definition of "Certified groundwater professional," as follows:

"*Certified groundwater professional*" means a person certified pursuant to ~~1995~~ Iowa Code section ~~455G.18~~455B.474 and 567—Chapter 134, Part A.

ITEM 53. Amend rule **567—135.2(455B)**, definition of "Chemicals of concern," as follows:

"*Chemicals of concern*" means the compounds derived from petroleum-regulated substances which are subject to evaluation for purposes of applying risk-based corrective action decision making. These compounds are benzene, ethylbenzene, toluene, and xylenes (BTEX) and naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. (NOTE: ~~Measurement of~~ Concentration values for these last four constituents ~~may be done~~ are determined by a conversion method from total extractable hydrocarbons, see subrule 135.8(3).)

ITEM 54. Rescind the definition of "Class A operator" in rule **567—135.2(455B)** and adopt the following **new** definition in lieu thereof:

"Class A operator" means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements. The Class A operator typically manages resources and

personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements under this chapter.

ITEM 55. Rescind the definition of "Class B operator" in rule **567—135.2(455B)** and adopt the following **new** definition in lieu thereof:

"Class B operator" means the individual who has day-to-day responsibility for implementing applicable regulatory requirements established by the department. The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST systems.

ITEM 56. Rescind the definition of "Class C operator" in rule **567—135.2(455B)** and adopt the following **new** definition in lieu thereof:

"*Class C operator*" means the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

ITEM 57. Adopt the following **new** definition of "Containment sump" in rule **567—135.2(455B)**:

"*Containment sump*" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

ITEM 58. Rescind the definition(s) of "Dispenser" in rule **567—135.2(455B)** and adopt the following **new** definition is lieu thereof:

"Dispenser" means equipment located above ground that dispenses regulated substances from the UST system.

ITEM 59. Adopt the following **new** definition of "Dispenser system" in rule **567—135.2(455B)**:

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system.

ITEM 60. Amend rule **567—135.2(455B)**, definition of "Drinking water well," as follows:

"Drinking water well" means any groundwater well used as a source for drinking water by humans and groundwater wells used primarily for the final production of food or medicine for human consumption ~~in facilities routinely characterized with Standard Industrial Codes (AIC) group 283 for drugs and 20 for foods~~.

ITEM 61. Adopt the following **new** definition of "Ethanol" in rule **567—135.2(455B)**:

"Ethanol" means ethyl alcohol that is to be blended with gasoline if it meets the standards provided in section 214A.2 of Iowa Code.

ITEM 62. Adopt the following **new** definition of "field-constructed tank" in rule **567—135.2(455B)**:

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

ITEM 63. Amend rule **567—135.2(455B)**, definition of "Free product," as follows:

"Free product" refers to a regulated substance that is present as a light nonaqueous phase liquid (e.g., liquid not dissolved in water).

ITEM 64. Amend rule **567—135.2(455B)**, definition of "Hydraulic conductivity," as follows:

"Hydraulic conductivity (K)" means the rate of water movement through the soil measured in meters per day (m/d) as determined by the following methods. For a saturated soil, the Bouwer-Rice method or its equivalent

shall be used. For unsaturated soil, use a Guelph permeameter or an equivalent in situ constant-head permeameter in a boring finished above the water table. If an in situ method cannot be used for unsaturated soil because of depth, or if the soil is homogeneous and lacks flow-conducting channels, fractures, cavities, etc., laboratory measurement of hydraulic conductivity is acceptable.

If laboratory methods are used, collect undisturbed soil samples using a thin-walled tube sampler in accordance with American Society of Testing and Materials (ASTM) Standard D1587. Samples shall be clearly marked, preserved and transported to the laboratory. The laboratory shall measure hydraulic conductivity using a constant-head permeameter in accordance with ASTM Standard D2434 or a falling-head permeameter in accordance with accepted methodology.

ITEM 65. Adopt the following **new** definition of "Light, nonaqueous-phase liquid" in rule **567—135.2(455B)**:

"*Light, nonaqueous-phase liquid*" or "*LNAPL"* refers to an organic compound that is immiscible with, and lighter than water (e.g., crude oil, gasoline, diesel fuel, heating oil).

ITEM 66. Amend rule **567—135.2(455B)**, definition of "Motor fuel," as follows:

"Motor fuel" means ~~petroleum or a petroleum based substance~~ a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any ~~grade of gasohol, and is typically used in the operation of a motor engine~~blend containing one or more of these substances (for example, motor gasoline blended with alcohol).

ITEM 67. Adopt the following **new** definition of "Over-excavation" in rule **567—135.2(455B)**:

"*Over-excavation*" refers to the excavation of subsurface materials outside the excavation zone for the purpose of removing contaminated substances.

ITEM 68. Amend rule **567—135.2(455B)**, definition of "Owner," as follows:

"*Owner*" means:

1. In the case of a UST system in use on July 1, 1985, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before July 1, 1985, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

~~*"Owner"*~~*Owner* does not include a person or institution, who, without participating in the management or operation of the underground storage tank or the tank site, or engaging in petroleum production, refining or marketing, holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or the tank site property, prior to obtaining ownership or control through debt enforcement, debt settlement, or otherwise.

ITEM 69. Amend rule **567—135.2(455B)**, definition of "Pipe" or "piping," as follows:

"Pipe" or *"piping"* means a hollow cylinder or tubular conduit that is constructed of nonearthen materials and that routinely contains and conveys regulated substances ~~from the underground tank(s) to the dispenser(s) or other end use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). This definition does not include vent, vapor recovery or fill lines~~.

ITEM 70. Amend rule **567—135.2(455B)**, definition of "Regulated substance," as follows:

3. Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) ~~of 1980~~ (but not including any substance regulated as a hazardous waste under subtitle C), and

4. Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons ~~derived from crude oil through the processes of separation, conversion,~~

~~upgrading, and finishing,~~ such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

ITEM 71. Amend rule **567—135.2(455B)**, definition of "Release detection," as follows:

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

ITEM 72. Rescind the definition of "Repair" in rule **567—135.2(455B)** and adopt the following **new** definition of "Repair" in lieu thereof:

"Repair" means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

ITEM 73. Amend rule **567—135.2(455B)**, definition of "Replace" or "replacement," as follows:

"Replace" or *"replacement"* means the installation of a new underground tank system or component, including dispensers, in substantially the same location as an existing tank system or component ~~in lieu of that tank system or component~~.

ITEM 74. Adopt the following **new** definition of "Replaced" in rule **567—135.2(455B)**:

"*Replaced*" means:

(a) For a tank - to remove a tank and install another tank.

(b) For piping - to remove 50 percent or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

ITEM 75. Rescind the definition of "Secondary containment" or "secondary containment piping" in rule **567—135.2(455B)** and adopt the following **new** definition in lieu thereof:

"Secondary containment" or "Secondarily contained" means a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

ITEM 76. Amend rule **567—135.2(455B)**, definition of "Site assessment investigation," as follows:

"Site assessment investigation" means an investigation conducted by a ~~registered~~ certified groundwater professional to determine relevant site historical data, the types, amounts, and sources of petroleum contaminants present, hydrogeological characteristics of the site, full vertical and horizontal extent of the contamination in soils and groundwater, direction and rate of flow of the contamination, ranges of concentration of the contaminants by analysis of soils and groundwater, the vertical and horizontal extent of the contamination exceeding department standards, and the actual or potential threat to public health and safety and the environment.

ITEM 77. Adopt the following **new** definition of "Temporary closure" in rule **567—135.2(455B)**:

"Temporary closure" means a regulated tank or UST system that has been out of operation for three months or more.

ITEM 78. Amend rule **567—135.2(455B)**, definition of "Tier 2 site assessment," as follows:

"Tier 2 site assessment" means the process of assessing risk to actual and potential receptors by using site-specific ~~field data~~ contaminant concentrations and designated Tier 2 exposure and fate and transport models to determine the applicable target level(s).

ITEM 79. Adopt the following **new** definition of "Training program" in rule **567—135.2(455B)**:

"Training program" means any program that provides information to and evaluates the knowledge of a Class A, Class B, or Class C operator through testing, practical demonstration, or another approach acceptable

to the department regarding requirements for UST systems that meet the requirements of 567-135.4(6) through (12).

ITEM 80. Amend rule **567—135.2(455B)**, definition of "Under-dispenser containment," as follows:

"Under-dispenser containment (UDC)" means containment underneath a dispenser system designed to ~~that will~~ prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater. ~~Such containment must:~~

- ~~Be intact and liquid-tight on its sides and bottom and at any penetrations;~~
- ~~Be compatible with the substance conveyed by the piping; and~~
- ~~Allow for visual inspection, monitoring and access to the components in the containment system.~~

ITEM 81. Amend rule **567—135.2(455B)**, definition of "Underground storage tank", paragraph "a" as follows:

a. Farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes. Iowa Code section ~~455B.471~~455B.473, subsection 4, requires those tanks existing prior to July 1, 1987, to be registered. Tanks installed on or after July 1, 1987, must comply with all 567—Chapter 135 rules;

ITEM 82. Amend rule **567—135.2(455B)**, definition of "Underground storage tank," by rescinding paragraph "d" and replacing it with the following **new** paragraph in lieu thereof:

d. Pipeline facility (including gathering lines):

(1) Which is regulated under 49 U.S. Code Chapter 601, or

(2) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S. Code Chapter 601 and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

ITEM 83. Amend rule **567—135.2(455B)**, definition of "Underground storage tank", paragraph "i" as follows:

i. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in paragraphs "a" through "~~j~~ i " of this definition.

ITEM 84. Adopt the following **new** definition of "Underground storage tank professional" or "UST Professional" in rule **567—135.2(455B)**:

"*Underground storage tank professional*" or "*UST professional*" means an individual licensed by the department under 567—Chapter 134, Part C. The licensing program includes underground storage tank system installation, installation inspection, UST system testing, tank lining, cathodic protection installation/inspection, and UST removal. The license issued will list the type of work the individual is licensed to perform.

ITEM 85. Amend subrule 135.3(1), introductory paragraph, as follows:

135.3(1) *Performance standards for new UST systems.* In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements. The UST system must be secondarily contained in accordance with 135.3(9).

ITEM 86. Amend paragraph **135.3(1)"a"** as follows:

a. *Tanks.* Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic; or

NOTE: The following ~~industry~~ codes of practice may be used to comply with 135.3(1)*"a"*(1):

Underwriters Laboratories Standard 1316, "~~Standard for~~ Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"~~;~~ or Underwriters Laboratories of Canada ~~CAN4-~~S615~~-M83~~, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids". ~~Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."~~

(2) The tank is constructed of steel and cathodically protected in the following manner:

1. The tank is coated with a suitable dielectric material;

2. Field-installed cathodic protection systems are designed by a corrosion expert;

3. Impressed current systems are designed to allow determination of current operating status as required in 135.4(2)*"c"*. This shall be accomplished by providing the rectifier with ampere and voltage meters that can be read by the owner and operator for comparison to the design standard set by the corrosion expert or a device that can warn the owner and operator when changes in ampere and voltage occur outside the design standard set by the corrosion expert.; and

4. Cathodic protection systems are operated and maintained in accordance with 135.4(2) or according to guidelines established by the department; ~~or~~ and

5. Impressed current systems must be designed not to cause stray current that can damage other underground structures (i.e., metal electrical conduits, water lines, gas lines, etc.); or

~~NOTE: The following codes and standards may be used to comply with 135.3(1)*"a"*(2): Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks"; Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks"; Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-GO3.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel~~

~~Underground Tanks for Flammable and Combustible Liquids."~~

NOTE: The following codes of practice may be used to comply with 135.3(1)*"a"*(2):

- Steel Tank Institute "Specification STI-P3 ® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";
- Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";
- Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and S6O3.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids," and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";
- Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or
- NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Systems by Cathodic Protection," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".

(3) The tank is constructed of ~~a steel-fiberglass-reinforced plastic composite~~ steel and clad or jacketed with a non-corrodible material; or

NOTE: The following ~~industry~~ codes may be used to comply with 135.3(1)*"a"*(3): ~~Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."~~

- Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";
- Steel Tank Institute ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Underground Storage Tanks";
- Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or

- Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®".

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

1. The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

2. Owners and operators maintain records that demonstrate compliance with the requirements of 135.3(1)*"a"*(4)"1" for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than 135.3(1)*"a"*(1) to (4).

ITEM 87. Amend paragraph **135.3(1)"b"** as follows:

b. Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified ~~below:~~ in this rule. This includes piping for remote tank fill locations.

All piping must have secondary containment, installed according to manufacturer's specifications and be compatible with the product stored and the environment to which it will be exposed. Piping must maintain its original specifications and structural integrity. Piping whose structural integrity has degraded must be replaced. All piping installations must meet National Fire Prevention Association 2000 Edition of NFPA 30 and 30A codes or the International Fire Code as adopted by the Iowa State Fire Marshal in *661- Chapter 51*, Flammable and Combustible Liquids.

(1) The piping is constructed of ~~fiberglass-reinforced plastic~~a non-corrodible material; or

NOTE: The following codes ~~and standards~~of practice may be used to comply with 135.3(1)*"b"*(1):

- Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or

- Underwriters Laboratories of Canada Standard S6660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids."

~~Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe"; Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas"; Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and Underwriters Laboratories of Canada Standard CAN 4 S633-M81, "Flexible Underground Hose Connectors."~~

(2) The piping is constructed of steel and cathodically protected in the following manner:

1. The piping is coated with a suitable dielectric material;

2. Field-installed cathodic protection systems are designed by a corrosion expert;

3. Impressed current systems are designed to allow determination of current operating status as required in 135.4(2)"*c*"; and

4. Cathodic protection systems are operated and maintained in accordance with 135.4(2) or guidelines established by the department; or

NOTE: The following codes ~~and standards~~of practice may be used to comply with 135.3(1)"*b*"(2): ~~National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems"; American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."~~

- American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

- Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";

- Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";

- NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”;

- NACE International Standard Practice SP 0285, “External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection”: or

- National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code".

(3) The piping is constructed of metal without additional corrosion protection measures provided that:

1. The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

2. Owners and operators maintain records that demonstrate compliance with the requirements of 135.3(1)“*b*”(3)“1” for the remaining life of the piping; or

~~NOTE: National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”; and National Association of Corrosion Engineers Standard RP-01-69, “Control of External Corrosion on Submerged Metallic Piping Systems,” may be used to comply with 135.3(1)“*b*”(3).~~

(4) The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in 135.3(1)“*b*”(1) to (3).

ITEM 88. Amend paragraph **135.3(1)“c”** as follows:

c. Spill and overfill prevention equipment.

(1) Except as provided in subparagraph (2), to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

1. Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

2. Overfill prevention equipment that will:

- Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

- Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank (not allowed for suction product delivery systems, tanks with stage 1 vapor recovery or when product delivery is by pumping) or triggering a high-level alarm; or

- Restrict flow 30 minutes prior to overfilling, alert the transfer operator with a high-level alarm one minute before overfilling, or automatically shut off the flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in subparagraph (1) if:

1. Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in subparagraph (1)"1" or "2" of this paragraph; or

2. The UST system is filled by transfers of no more than 25 gallons at one time.

(3) Flow restrictors used in vent lines may not be used to comply with paragraph (c)(1)(2) of this section when overfill prevention is installed or replaced.

(4) Spill and overfill prevention equipment must be periodically tested or inspected in accordance with 567-135.4(12).

(5) Spill prevention equipment must be kept free of any liquid and debris. Any liquid or debris must be removed prior to product delivery.

ITEM 89. Amend paragraph **135.3(1)"d"** as follows:

d. Installation. ~~All tanks and piping~~ The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions. The UST system installation shall be conducted by an installer licensed by the department under 567- Chapter 134, Part C, and in accordance with rules 567—134.24(3) and 567—134.24(4).

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of 135.3(1)*"d"*: ~~American Petroleum Institute Publication 1615,~~

~~"Installation of Underground Petroleum Storage System"; Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or American National Standards Institute Standard 831.3, "Petroleum Refinery Piping," and American National Standards Institute Standard 831.4, "Liquid Petroleum Transportation Piping System."~~

- American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";
- Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or
- National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages".

ITEM 90. Amend paragraph **135.3(1)"e"** as follows:

e. Certification of installation. All owners and operators must ensure that ~~one or more of~~ the following methods of certification, testing, ~~or~~ and inspection ~~is~~ are used to demonstrate compliance with paragraph *"d"* of this subrule by providing a certification of compliance on the UST ~~notification~~registration form in accordance with 135.3(3).

~~(1) The installer has been certified by the tank and piping manufacturers; or~~

~~(2)~~(1) The installer ~~has been certified or~~ is licensed by the department as provided in 567—Chapter 134, Part C; ~~or~~and

~~(3)~~(2) The installation has been inspected ~~and certified~~ by a licensed installation inspector as required by 567—Chapter 134, Part C. ~~registered professional engineer with education and experience in UST system installation; or~~

~~(4) The installation has been inspected and approved by an inspector certified or licensed by the Iowa comprehensive petroleum underground storage tank fund board; or~~

~~(5) All work listed in the manufacturer's installation checklists has been completed; or~~

~~(6) The owner and operator have complied with another method for ensuring compliance with~~

~~paragraph "*d*" that is determined by the department to be no less protective of human health and the environment.~~

ITEM 91. Adopt the following **new** paragraph(s) **135.3(1)"f"**:

f. Dispenser systems. Each UST system must be equipped with under-dispenser containment (UDC) for any new or replaced dispenser system.

(1) A dispenser system is considered new when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed at a location where there previously was no dispenser (new UST system or new dispenser location at an existing UST system). The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

(2) UDC shall be installed whenever an existing dispenser system is removed and replaced with another dispenser and the equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping. UDC is not required when only the emergency shutoff or shear valves or check valves are replaced.

(3) UDC shall be installed beneath the dispenser whenever ten feet or more of piping is repaired or replaced within ten feet of a dispenser.

(4) UDC must be liquid-tight on its sides, bottom, and at any penetrations. UDC must allow for visual inspection and access to the components in the containment system or be periodically monitored for leaks from the dispenser system.

ITEM 92. Amend subrule 135.3(2) as follows:

135.3(2) *Upgrading of existing UST systems.* Owners and operators must permanently close any UST system that does not meet the new UST system performance standards or has not been upgraded in accordance with paragraphs (b) through (d) of this section. This section does not apply to previously deferred UST systems.

Upgrading is no longer allowed for UST systems not upgraded by December 22, 1998.

a. Alternatives allowed. Not later than December 22, 1998, all existing UST systems ~~must~~ had to comply with one of the following requirements:

(1) New UST system performance standards under 135.3(1);

(2) The upgrading requirements in paragraphs *"b"* through *"d"* below; or

(3) Closure requirements under rule 567—135.15(455B), including applicable requirements for corrective action under rules 567—135.7(455B) to 567—135.12(455B).

Replacement or upgrade of a tank system on a petroleum contaminated site classified as ~~a~~ high or low risk in accordance with subrule 135.12(455B) shall be a double wall tank or a tank equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures in accordance with 135.5(4)*"g"* ~~or other approved tank system or methodology approved by the Iowa comprehensive petroleum underground storage tank fund board~~.

b. Tank upgrading requirements. Steel tanks ~~must~~ had to be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) *Interior lining.* ~~A tank may be~~ Tanks upgraded by internal lining ~~if~~ must meet the following:

1. The lining ~~is~~ was installed in accordance with the requirements of 135.4(4), and

2. Within ten years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

3. If the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, the lined tank must be permanently closed in accordance with rule 567—135.15(455B).

(2) *Cathodic protection.* ~~A tank may be~~ Tanks upgraded by cathodic protection ~~if the cathodic protection system~~ meets the requirements of 135.3(1)*"a"*(2)"2," "3," and "4" and the integrity of the tank ~~is~~ was ensured using one of the following methods:

1. The tank ~~is~~ was internally inspected and assessed to ensure that the tank ~~is~~ was structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

2. The tank ~~has~~ had been installed for less than ten years and is monitored monthly for releases in accordance with 135.5(4)*"d"* through ~~*"h"*~~ *"i"*; or

3. The tank ~~has~~ had been installed for less than ten years and ~~is~~ was assessed for corrosion holes by conducting two tightness tests that meet the requirements of 135.5(4)*"c."* The first tightness test must ~~be~~ have been conducted prior to installing the cathodic protection system. The second tightness test must have been ~~be~~ conducted between three and six months following the first operation of the cathodic protection system; or

4. The tank ~~is~~ was assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than 135.3(2)*"b"*(2)"1" to "3."

(3) *Internal lining combined with cathodic protection.* ~~A tank may be~~ Tanks upgraded by both internal lining and cathodic protection ~~if~~ must have met the following:

1. The lining ~~is~~ was installed in accordance with the requirements of 135.4(4); and

2. The cathodic protection system was installed within six months of lining installation and meets the requirements of 135.3(1)*"a"*(2)"2," "3," and "4."

~~NOTE: The following codes and standards may be used to comply with subrule 135.3(2): American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10-Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection"; National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."~~

Note to paragraph "b": The following historical codes of practice were listed as options for complying with paragraph "b" of this section:

- American Petroleum Institute Publication 1631, “Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks”;
- National Leak Prevention Association Standard 631, “Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";
- National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems”; and
- American Petroleum Institute Publication 1632, "“Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

Note to paragraph “b”(1)”2”: The following codes of practice may be used to comply with the periodic lining inspection requirement of this section:

- American Petroleum Institute Recommended Practice 1631, “Interior Lining and Periodic Inspection of Underground Storage Tanks”;
- National Leak Prevention Association Standard 631, Chapter B “Future Internal Inspection Requirements for Lined Tanks”;
- Ken Wilcox Associates Recommended Practice, “Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera”; or
- Underwriters Laboratories (UL) 1856 Underground Fuel Tank Internal Retrofit Systems.

c. *Piping upgrading requirements.* Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of 135.3(1)*“b”*(2)“2,” “3,” and “4.”

Note: The codes ~~and standards~~ of practice listed in the note following 135.3(1)*“b”*(2) may be used to comply with this requirement.

d. *Spill and overfill prevention equipment.* To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with ~~new~~ UST system spill and overfill prevention equipment requirements specified in 135.3(1)*“c.”*

ITEM 93. Amend subrule 135.3(3) as follows:

135.3(3) *Registration and n~~N~~otification requirements.*

a. Except as provided in 135.3(3)*"b,"* the owner of an underground storage tank existing on or before July 1, 1985, shall complete and submit to the department a copy of the ~~notification~~registration form provided by the department ~~by May 1, 1986~~.

b. The owner of an underground storage tank taken out of operation between January 1, 1974, and July 1, 1985, shall complete and submit to the department a copy of the ~~notification~~registration form provided by the department ~~by May 8, 1986,~~ unless the owner knows the tank has been removed from the ground. For purposes of this subrule, "owner" means the person who owned the tank immediately before the discontinuation of the tank's use.

c. An owner or operator who brings into use an underground storage tank system after July 1, 1985, shall complete and submit to the department a copy of the ~~notification~~ registration form provided by the department within 30 days of ~~installing the tank in the ground~~ the final installation inspection required in 567--134.27(2)"c" by a licensed installation inspector. The owner or operator shall not allow the deposit of any regulated substance into the tank without prior approval of the department or until the ~~tank has been issued a tank~~ permanent registration tag and annual tank tag have been attached to the tank fill pipe and the tank system is covered by an approved financial responsibility mechanism in accordance with 567—Chapter 136.

d. All owners and operators of new UST systems must provide UST system details and a site diagram, and certify in the ~~notification~~ registration form compliance with the following requirements:

(1) Installation of tanks and piping under 135.3(1)*"e"*;

(2) Cathodic protection of steel tanks and piping under 135.3(1)*"a"* and *"b"*;

(3) Financial responsibility under 567—Chapter 136, Iowa Administrative Code;

(4) Release detection methods under 135.5(2) and 135.5(3)~~.~~;

(5) Class A, B and C operator certification under 135.4(6);

(6) NESHAP Stage 1 vapor recovery.

e. All owners and operators of new UST systems must ensure that the licensed installer certifies in the ~~notification~~registration form that the methods used to install the tanks and piping comply with the requirements in 135.3(1)*"d."*

f. Exemption from reporting requirement. Paragraphs *"a"* to *"c"* do not apply to an underground storage tank for which notice was given pursuant to Section 103, Subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980. (42 U.S.C. Subsection 9603(c))

g. Reporting fee. The ~~notice~~ registration form submitted by the owner to the department under paragraphs *"a"* to *"c"* shall be accompanied by a fee of $10 for each tank included in the ~~notice~~form.

h. Notification requirement for installing a tank. A person installing an underground storage tank and the owner or operator of the underground storage tank must notify the department of their intent to install the tank 30 days prior to installation. Notification shall be on a form provided by the department.

i. Notification requirements for a person who acquires, sells, installs, modifies or repairs ~~a tank~~ an UST system.

(1) A person, company or lending institution that assumes ownership or operation of a regulated underground storage tank must submit notification to the department on a form provided by the department within 30 days of acquisition and prior to tank operation. The owner must include copies of training certificates for the Class A and Class B operators [135.4(6)] and proof of financial responsibility required in 567—Chapter 136. The new owner is responsible for any current and back tank management fees that have not been previously paid.

(2) A person who sells, installs, modifies, or repairs a tank used or intended to be used in Iowa shall notify, in writing, the purchaser and the owner or operator of the tank of the obligations specified in paragraphs 135.3(3)*"c"* and *"j"* and the financial assurance requirements in 567—Chapter 136. The notification must include the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department, or tanks which do not have financial assurance as required in 567-Chapter 136. A standard notification form supplied by the department may be used to satisfy this requirement.

j. It is unlawful for a person to deposit or accept a regulated substance in an underground storage tank that has not been registered and issued permanent or annual tank management tags in accordance with rule 567—

135.3(455B). It is unlawful for a person to deposit or accept a regulated substance into an underground storage tank if the person has received notice from the department that the underground storage tank is subject to a delivery prohibition or if there is a "red tag" attached to the UST fill pipe or fill pipe cap as provided in subrule 135.3(8).

(1) The department may provide written authorization to receive a regulated substance when there is a delay in receiving tank tags or at new tank installations to allow for testing the tank system.

(2) The department may provide known depositors of regulated substances lists of underground storage tank sites that have been issued tank tags, those that have not been issued tank tags, and those subject to a delivery prohibition pursuant to subrule 135.3(8). These lists do not remove the requirement for depositors to verify that current tank tags are affixed to the fill pipe prior to delivering product. Regulated substances cannot be delivered to underground storage tanks without current tank tags or those displaying a delivery prohibition "red tag" as provided in subrule 135.3(8).

(3) A person shall not accept or deposit a regulated substance in an underground storage tank after receiving written or oral notice from the department that the tank is not covered by an approved form of financial responsibility in accordance with 567—Chapter 136.

k. If an owner or operator fails to register an underground storage tank within 30 days after installation per 567--135.3(3)"c"~~or obtain annual renewal tags by April 1~~, the owner or operator shall pay an additional $250 per tank late fee upon registration of the tank~~. or application for tank tag renewal.~~ The imposition of this fee does not preclude the department from assessing an additional administrative penalty in accordance with Iowa Code section 455B.476.

ITEM 94. Amend subrule 135.3(4) as follows:

135.3(4) *Farm and residential tanks.*

a. The owner or operator of a farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes is subject to the requirements of this subrule.

b. Farm and residential tanks~~,~~ installed before July 1, 1987, ~~shall be reported on a notification form~~

~~by July 1, 1989, but owners or operators are not required to pay a registration fee~~are required to be registered with the department.

c. Farm and residential tanks ~~that were~~ installed on or after July 1, 1987, ~~shall~~must be in compliance with all the underground storage tank regulations.

ITEM 95. Rescind paragraph **135.3(5)"b"** and adopt the following **new** paragraph in lieu thereof:

b. The owner or operator of tanks over 1100-gallon capacity must submit a tank management fee form and fee payment of $65 per tank by January 15 of each year.

(1) An additional $250 per tank late fee must be paid if the tank management fee is not paid by March 1.

(2) The owner or operator must submit written proof that the tanks are covered by an approved form of financial responsibility in accordance with 567—Chapter 136.

(3) Upon proper payment of the fee and acceptable proof of financial responsibility, and a determination there are no outstanding compliance violations, a one-year renewal tag will be issued for the period from April 1 to March 31.

(4) If there are outstanding compliance violations, the annual tank tags may be withheld until the violations are corrected.

(5) The department shall refund a tank management fee if the tank is permanently closed prior to April 1 for that year.

ITEM 96. Amend paragraph **135.3(5)"d"** as follows:

d. A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the existence or absence of a ~~current~~ permanent registration tag, a current annual ~~tank management fee~~ renewal tag, or a delivery prohibition "red tag" as provided in subrule 135.3(8). If ~~the~~ a current annual renewal tag, or a silver permanent tag for regulated tanks less than 1100 gallons is not affixed to

the fill pipe or fill pipe cap or if a delivery prohibition "red tag" is displayed, the person shall not deposit the substance in the tank.

ITEM 97. Amend subrule 135.3(6) as follows:

135.3(6) *Previously unregistered petroleum ~~Petroleum~~ underground storage tanks~~tank registration amnesty program~~.*

~~*a.*~~ A petroleum underground storage tank required to be registered under 135.3(3) and 135.3(4) which has not been registered ~~prior to July 1, 1988, may~~ shall be registered under the following conditions:

a.~~(1)~~ The tank registration fee under 135.3(3)*"g"* shall accompany the registration.

b.~~(2)~~ The storage tank management fee and any late fees under 135.3(5) and 135.3(3)*"k"* shall be paid for past years in which the tank should have been registered.

c. The department may waive the late fee(s).

~~*b.* If a tank is registered under this subrule on or prior to October 1, 1989, penalties under Iowa Code section 455B.477 shall be waived.~~

ITEM 98. Rescind and reserve subrule **135.3(7)**.

ITEM 99. Amend subparagraph **135.3(8)"a"(1)** as follows:

(1) Annual ~~registration~~ renewal tag and tank management fee process. Owners and operators shall certify to the following on a form prepared by the department when applying for annual tank tags pursuant to subrule 135.3(5):

1. Installation and performance of an approved UST and piping release detection method as provided in rule 567—135.5(455B), including an annual line tightness test and a line leak detector test if applicable.

2. Installation of an approved overfill and spill protection system as provided in paragraph 135.3(1)*"c."*

3. Installation of an approved corrosion protection system as provided in paragraphs 135.3(1)*"a"*

and *"b."*

4. If the UST system has been out of operation for more than three months, that the UST system has been temporarily closed in accordance with rule 567—135.15(455B) and a certification of temporary closure has been submitted to the department.

5. If the UST system has been removed or filled in place within the last 12 months, the date of removal or filling in place and whether a closure report has been submitted as provided in rule 567—135.15(455B).

ITEM 100. Adopt the following **new** subparagraph(s) **135.3(8)"b"(11), (12), (13), and (14)** as follows:

(11) The owner or operator has failed to provide documentation of Class A or B operator training.

REINSTATEMENT CRITERION: The owner or operator must submit a copy of the certificates of training for Class A and B operators.

(12) The owner or operator has failed to install required secondary containment.

REINSTATEMENT CRITERION: The owner or operator must document secondary containment has been installed as provided in 135.3(9).

(13) The owner or operator has failed to pay the annual tank management fee.

REINSTATEMENT CRITERION: The owner or operator must pay the current and any previous unpaid tank management fees in addition to any late fees as provided in paragraph 135.3(5)*"b"*.

(14) When tanks are no longer in use or in temporary closure.

REINSTATEMENT CRITERION: The owner or operator must provide a completed *Return to Service* form along with required documents.

ITEM 101. Amend paragraph **135.3(8)"f"** as follows:

f. Delivery prohibition procedure. Upon oral or written notice that the delivery prohibition response action has been imposed, the owner or operator and any person in charge of the UST facility shall be notified that they are not authorized to receive any further delivery of regulated substances until conditions for reinstatement of

eligibility are satisfied. ~~Owners and operators are required to immediately remove and return to the department the current annual tank management fee tags or the tank registration tags if there are no tank management fee tags.~~ Owners and operators are required to provide the department with names and contact information for all persons who convey or deposit regulated substances to the USTs. The department will attempt to notify known persons who convey or deposit regulated substances to the USTs that they are not authorized to deliver to the USTs until further notice by the department as provided in paragraph 135.3(3)"j" and subrule 135.3(5).

~~If the tank tags are not returned within three business days, the~~ The department shall visit the site~~, remove the tags,~~ and affix a "red tag" to the fill pipes or fill pipe caps of all affected USTs. It is unlawful for any person to deposit or accept a regulated substance into a UST that has a "red tag" affixed to the fill pipe or fill pipe cap. The department may allow the owner and operator to dispense and sell the remainder of existing fuel unless the department determines there is an immediate risk of a release or other risk to human health, safety or the environment. The department shall confirm in writing the basis for the delivery prohibition response action, contacts made prior to the action, and steps the owner or operator must take to reinstate fuel delivery.

ITEM 102. Rescind subrule **135.3(9)** and adopt the following **new** subrule in lieu thereof:

135.3(9) *Secondary containment requirements for UST system installations.* All new and replacement underground storage tank systems and appurtenances used for the storage and dispensing of petroleum products shall have secondary containment in accordance with this subrule. The secondary containment provision includes the installation of containment sumps.

a. Tanks and piping installed or replaced after November 28, 2007, must have secondary containment that is designed, installed, and maintained according to the performance standards in subrule 135.3(1) and paragraph 135.5(3)"b".

(1) The secondary containment may be manufactured as an integral part of the primary containment or constructed as a separate containment system.

(2) At a minimum, the secondary containment must:

1. Contain regulated substances leaked from the UST system until detected and removed.

2. Prevent the release of regulated substances into the environment at any time during the operational life of the underground storage tank system.

3. Tanks must be checked for evidence of a release at least every 30 days as provided in paragraph 135.5(2)”a”.

b. Testing and inspection. Containment sumps shall be liquid-tight and must be inspected and tested in accordance with the following:

(1) Inspections for secondary containment sumps (spill catchment basins, turbine sumps, transition or intermediate sumps, and under-dispenser containment) shall:

1. Consist of visual inspection by an Iowa-licensed installer or Iowa-certified compliance inspector every two years.

2. Containment sumps must be intact (no cracks or perforations) and liquid-tight, including sides and bottom.

3. Containment sumps must be maintained and kept free of debris, liquid, and ice at all times.

4. Regulated substances leaked or spilled into any containment sumps shall be immediately removed.

(2) Secondary containment sumps used for interstitial monitoring of piping shall be tested upon installation and periodically in accordance with 135.4(12).

ITEM 103. Amend paragraph **135.4(1)“a”** as follows:

a. Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

NOTE: The transfer procedures described in National Fire Protection Association ~~Publication~~ Standard 385 <u>“Standard for Tank Vehicles for Flammable and Combustible Liquids” or American Petroleum Institute Recommended Practice 1007, “Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles”</u> may be used to comply with 135.4(1)*“a.”* Further guidance on spill and overfill prevention appears in American

Petroleum Institute ~~Publication 1621~~, "Recommended Practice 1621 for Bulk Liquid Stock Control at Retail Outlets~~,~~". ~~and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."~~

ITEM 104. Amend subrule 135.4(2), introductory paragraph, as follows:

135.4(2) *Operation and maintenance of corrosion protection.* All owners and operators of ~~steel~~ metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

ITEM 105. Amend paragraph **135.4(2)"b"** as follows:

NOTE: ~~National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,"~~ The following codes of practice may be used to comply with 135.4(2)*"b"*(2).

- NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";
- NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";
- Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";
- NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or
- NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

ITEM 106. Adopt the following **new** paragraph **135.4(2)"e"**:

e. When an impressed current cathodic protection system is failing cathodic protection for the time periods given below, owners and operators must take the following actions:

(1) For impressed current cathodic protection systems that have been inoperative for 0-90 days after failing a corrosion protection test or after discovering the system is not operating, all of the following must be completed:

1. Power must be restored to an inoperative corrosion protection system. A damaged or failed corrosion protection system must be repaired by a cathodic protection tester. A corrosion expert must approve any modifications to the system that are outside of the original design.

2. The corrosion protection system must be retested within six months of repair.

3. A copy of the test and any repairs must be kept as part of the cathodic protection records.

4. A copy of the new design standards must be kept as part of the cathodic protection records.

(2) For impressed current corrosion protection systems that have been inoperative for 90-365 days or repaired 90-365 days after failing a corrosion protection test, all of the following must be completed:

1. Notify the department.

2. Power must be restored to an inoperative corrosion protection system.

3. The corrosion protection system must be repaired, tested and returned to service under the supervision of a corrosion expert.

4. A precision tightness test must be conducted on the entire UST system.

5. The corrosion protection system must be retested within six months of the repair or power being restored.

6. A copy of the test and any repairs must be kept as part of the cathodic protection records.

7. A copy of the new design standards must be kept as part of the cathodic protection records.

8. If determined the tank is not suitable for corrosion protection, the tank must be permanently closed in accordance with 567—135.15(2).

(3) If the impressed current corrosion protection system has been inoperative for more than 365 days or was not repaired for more than 365 days after failing a corrosion protection test, all of the following must be completed:

1. Notify the department.

2. Immediately empty and stop using the tank system.

3. An internal inspection of the steel tank must be conducted according to a national standard (e.g., API 1631). If the UST fails the internal inspection, the UST owner must permanently close the tank in accordance 567—135.15(2).

4. All metal piping and buried metal components (e.g., flex connectors, couplings) that routinely contain product must be inspected by an UST professional or cathodic protection tester. If the metallic components have no visible corrosion and have passed a line tightness test (unless the piping is exempt from leak detection, e.g., Safe or European Suction) then the cathodic protection system may be repaired or replaced under the supervision of a corrosion expert. Metallic components that show visible corrosion must be replaced.

5. A precision test must be conducted on the entire UST system following repair or replacement of the cathodic protection system.

6. The corrosion protection system must be retested within six months of repair.

7. A copy of the tests and any repairs must be kept as part of the cathodic protection records.

8. A copy of the new design standards must be kept as part of the cathodic protection records.

(4) If the impressed current cathodic protection system has been inoperable for more than 365 days and cannot or will not be brought back into immediate use, the tank system must be permanently closed in accordance with 567—135.15(2).

ITEM 107. Adopt the following **new** paragraph(s) **135.4(3)"a"** and **"b"**:

a. Owners and operators must notify the department at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the department.

b. Owners and operators must have an UST installer licensed under 567-Chapter 134, Part C (455B) submit the department's checklist for equipment compatibility for the UST system to the department.

ITEM 108. Amend subrule 135.4(3) "NOTE" as follows:

NOTE: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of subrule 135.4(3): American Petroleum Institute ~~Publication~~ Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and ~~Service~~ Filling Stations".~~; and American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."~~

ITEM 109. Amend subrule 135.4(4) as follows:

135.4(4) *Repairs ~~allowed~~ and replacement.* Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

a. Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

NOTE: The following codes and standards may be used to comply with 135.4(4)*"a"*:~~ National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."~~

- National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";
- International Fire Code;
- American Petroleum Institute Recommended Practice 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines";
- American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
- National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";

- National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";

- Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";

- NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

- Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks".

b. Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

c. *Piping and fittings.*

(1) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. ~~Fiberglass~~Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(2) Any replacement of ten feet or more of piping shall have secondary containment.

(3) If removing 50 percent or more of any piping run, the entire piping run must be removed and replaced with secondarily contained piping and interstitial monitoring.

(4) All piping replacements requiring secondary containment shall be constructed with transition or intermediate containment sumps.

d. Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the department within 30 days following the date of completion of the repair. All other repairs to ~~Repaired~~ tanks and piping must be tightness tested in accordance with 135.5(4)*"c"* and 135.5(5)*"b"* within 30 days following the date of the

completion of the repair except as provided in subparagraphs (1) to (3) below:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in 135.5(4)*"d"* through ~~*"h"*~~ *"i"*; or

(3) Another test method is used that is determined by the department to be no less protective of human health and the environment than those listed above.

Note to paragraph (d): The following codes of practice may be used to comply with paragraph (d) of this section:

- Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks"; or
- Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space".
- Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

e. Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with 135.4(2)*"b"* and *"c"* to ensure that it is operating properly.

f. Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with 135.4(1) to ensure it is operating properly.

g. Installation of any new or replacement turbine pumps involving the direct connection to the tank shall have secondary containment.

~~*f.*~~*h.* UST system owners and operators must maintain records of each repair ~~for the remaining operating life of~~ until the UST system is permanently closed or undergoes a change-in-service pursuant to 135.15(2) ~~that demonstrate compliance with the requirements of this subrule~~.

i. Repairs or replacements to an UST system must be conducted by an Iowa licensed UST

professional whose license is issued for that specific work.

ITEM 110. Amend subrule 135.4(5), introductory paragraph, as follows:

135.4(5) *Reporting and record keeping.* Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the ~~Resource Conservation and Recovery~~ Solid Waste Disposal Act, as amended.

ITEM 111. Adopt the following **new** subparagraph **135.4(5)"a"(2)**: Renumber the following subparagraphs.

a *Reporting.* Owners and operators must submit the following information to the department:

(1) Notification for all UST systems (135.3(3)), which includes certification of installation for new UST systems (135.3(1)*"e"*);

(2) Notification of equipment replacement or addition of new equipment;

~~(2)~~(3) Reports of all releases including suspected releases (135.6(1)), spills and overfills (135.6(4)), and confirmed releases (135.7(2));

~~(3)~~(4) Corrective actions planned or taken including initial abatement measures (135.7(3)), initial site characterization (567—135.9(455B)), free product removal (135.7(5)), investigation of soil and groundwater cleanup and corrective action plan (567—135.8(455B) to 567—135.12(455B)); ~~and~~

~~(4)~~(5) A notification before permanent closure or change-in-service (135.15(2)).~~;~~

ITEM 112. Adopt the following **new** subparagraph(s) **135.4(5)"a"(6) through (9)** as follows:

(6) Notification of any change in ownership;

(7) Notification of any change in Class A or Class B operators;

(8) Notification of any loss of financial responsibility (i.e., insurance);

(9) Notification prior to UST systems switching to certain regulated substances.

ITEM 113. Amend paragraph **135.4(5)"b"** as follows:

b. *Record keeping.* Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (135.3(1)*"a"*(4); (135.3(1)*"b"*(3)).

(2) Documentation of operation of corrosion protection equipment (135.4(2));

(3) Documentation of UST system repairs (135.4(4)~~*"f"*~~ *"h"*);

(4) ~~Recent~~ Documentation of compliance with release detection requirements (135.5(6)); ~~and~~

(5) Results of the site investigation conducted at permanent closure ~~(135.15(5))~~(135.15(3))~~.~~;

(6) Cathodic protection system testing results (135.4(2));

(7) Class A, B and C operator training certificates (135.4(6));

(8) Secondary containment test results (135.3(9));

(9) Documentation of periodic walkthrough inspections (135.4(13));

(10) Documentation of compatibility for UST systems (135.4(3));

(11) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (135.4(12)).

ITEM 114. Amend subparagraph **135.4(5)"c"(2)** as follows:

(2) At a readily available alternative site and be provided for inspection to the department ~~upon request~~ within two business days of department request.

ITEM 115. Amend paragraph **135.4(6)"b"** as follows:

b. A facility may not operate ~~after December 31, 2011,~~ unless operators have been designated and trained as required in this rule, or unless otherwise agreed upon by the department based on a finding of good cause for failure to meet this requirement and a plan for designation and training at the earliest practicable date.

ITEM 116. Amend paragraph **135.4(6)"g"** as follows:

g. Designated operators must successfully complete required training under subrule 135.4(9) ~~no later than December 31, 2011~~.

ITEM 117. Amend paragraph **135.4(6)"i"** as follows:

i. When a facility is found to be out of compliance, the department may require ~~the owner and operator to retrain~~ the designated UST system Class A, B, or C operator be retrained under a plan approved by the department. The retraining must occur within ~~60~~ 30 days from departmental notice for Class A and Class B operators and within 15 days for Class C operators.

ITEM 118. Amend subparagraph **135.4(7)"a"(1)** as follows:

(1) Class A operators have the primary responsibility to operate, ~~*and*~~ maintain, and have knowledge of the regulatory requirements for the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter in the following ways:

ITEM 119. Amend subparagraph **135.4(7)"b"(1)** as follows:

(1) A Class B operator ~~implements~~ is knowledgeable of the applicable underground storage tank regulatory requirements and standards, and implements them in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operation, maintenance, and record keeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator's principal place of business. A Class B operator's responsibilities include, but are not limited to:

1. Performing mandated system tests at required intervals and making sure spill prevention, overfill control equipment, and corrosion protection equipment are properly functioning.

2. Assisting the owner by ensuring that release detection equipment is operational, release detection monitoring and tests are performed at the proper intervals, and release detection records are retained and made

available to the department and compliance inspectors.

3. Making sure record-keeping and reporting requirements are met and that relevant equipment manufacturers' or third-party performance standards are available and followed.

4. Properly responding to, investigating, and reporting emergencies caused by releases or spills from USTs.

5. Performing UST release detection in accordance with rule 567—135.5(455B).

6. Monitoring the status of UST release detection.

7. Meeting spill prevention, overfill prevention, and corrosion protection requirements.

8. Reporting suspected and confirmed releases and taking release prevention and response actions according to the requirements of rule 567—135.6(455B).

9. Training and documenting Class C operators to make sure at least one Class C operator is on site during operating hours. Class B operators shall be familiar with Class C operator responsibilities and may provide ~~required~~ additional training for Class C operators.

ITEM 120. Amend subparagraph **135.4(7)"c"(1)** as follows:

(1) ~~Within six months after October 14, 2009, written~~Written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site.

ITEM 121. Amend subrule 135.4(8), introductory paragraph, as follows:

135.4(8) *UST operator training course requirements.* Individuals must attend a department-approved training course covering material designated for each operator class. Individuals must attend every session of the training~~,~~ and take the department's examination~~, and attend examination review~~.

ITEM 122. Amend subparagraph **135.4(8)"b"(8)** as follows:

(8) Requirements of 30-day and annual walkthrough inspections. ~~Discussion of the benefits of~~

~~monthly or frequent inspections and content and use of inspection checklists.~~ Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

ITEM 123. Adopt the following **new** subparagraph(s) **135.4(8)"b"(19)**:

(19) Requirements for facilities that operate unstaffed at any time.

ITEM 124. Rescind paragraph **135.4(8)"c"** and adopt the following **new** paragraph in lieu thereof:

c. Class C operators. To be certified as a Class C operator, an individual must complete a department-approved training course. A Class A or Class B operator who has completed a department-approved training course may provide the Class C training. Class C operator training must include at a minimum:

(1) A general overview of the department's UST program and purpose;

(2) Groundwater protection goals;

(3) Public safety;

(4) UST system overview;

(5) Administrative requirements; and

(6) Action to be taken in response to an emergency condition due to a spill or release from an UST system.

Training must include written procedures for the Class C operator, including notification instructions necessary in the event of emergency conditions. The written instructions and procedures must be readily available on site. A Class A or Class B operator may provide additional on-site Class C training specific to their UST system.

ITEM 125. Amend subrule 135.4(9), introductory paragraph, as follows:

135.4(9) *Examination and review requirement*. Class A and Class B operators must complete the department-approved training course and ~~take~~ achieve a passing grade of 85 percent on the ~~an~~ examination to

verify their understanding and knowledge. The examination may include both written and practical (hands-on) testing activities. The trainer must follow up the examination with a review of missed test questions with the class or individual to ensure understanding of problem areas. Upon successful completion of the training course, the applicant will receive a certificate verifying the applicant's status as a Class A, Class B, or Class C operator.

ITEM 126. Amend paragraph **135.4(9)"b"** as follows:

b. Transferability to another UST site. Class A and Class B operators may transfer to other UST facilities in Iowa provided the operator is properly designated by the facility owner as a Class A or Class B operator according to 567—subrule ~~134.4(13)~~135.4(11). Class A and Class B operators transferring from other states shall seek prior approval of training qualifications, unless the department has preapproved the out-of-state program as substantially equivalent to the requirements of this chapter.

ITEM 127. Amend subrule 135.4(10) as follows:

135.4(10) *Timing of UST operator training.*

a. An owner shall ensure that Class A, Class B, and Class C operators are trained ~~as soon as practicable after October 14, 2009, contingent upon availability of~~ by approved training providers~~, but not later than December 31, 2011, except as provided in paragraph 135.4(6)"b."~~ prior to assuming duties of that class of operator.

b. When a Class A or Class B operator is replaced, a new operator must be trained prior to assuming duties for that class of operator. A copy of the certificate of training must be submitted to the department within 30 days of assuming duties.

c. Class C operators must be trained before assuming the duties of a Class C operator. ~~Within six months after October 14, 2009, written~~ Written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site. A Class C operator may be briefed on these procedures concurrent with annual safety training required under Occupational Safety and Health Administration regulations, 29 CFR, Part 1910.

ITEM 128. Amend paragraph **135.4(11)"b"** as follows:

b. A copy of the certificates of training for Class A and Class B operators shall be on file and readily available for inspection in accordance with subrule 135.4(5). Records verifying completion of training or retraining of Class A, Class B, and Class C operators must identify name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as Class A, Class B, and Class C operators are designated.

ITEM 129. Adopt the following **new** subrule 135.4(12):

135.4(12) *Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.*

a. Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

1. The equipment is double walled and the integrity of both walls is periodically monitored at a frequency of not less than every 30 days. If owners and operators discontinue periodic monitoring of this equipment they must begin meeting paragraph 2 of this section and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

2. The spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

- Requirements developed by the manufacturer (Note: Owners and operators may use this option

only if the manufacturer has developed requirements); or

- Code of practice developed by a nationally recognized association or independent testing laboratory; or
- Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in this section.

(2) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in 135.3(1)”c” and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the following criteria:

- Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements); or
- Code of practice developed by a nationally recognized association or independent testing laboratory; or
- Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in this section.

b. Owners and operators must begin meeting these requirements as follows:

(1) For UST systems in use on or before [**effective date of rule**], the initial spill prevention equipment test and overfill prevention equipment inspection must be conducted not later than October 13, 2021.

(2) For UST systems brought into use after [**effective date of rule**], these requirements apply at installation.

c. Owners and operators must maintain records as follows for spill prevention equipment, and overfill prevention equipment:

(1) All records of testing or inspection must be maintained for three years; and

(2) For spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

Note the following code of practice may be used to comply with this section: Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

ITEM 130. Adopt the following **new** subrule 135.4(13):

135.4(13) *Periodic operation and maintenance walkthrough inspections.* Conduct inspections to properly operate and maintain UST systems.

a. Conduct a walkthrough inspection every 30 days that, at a minimum, checks the following equipment as specified below (Exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

(1) Spill prevention equipment - visually check for damage; remove liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it attaches securely on the fill pipe and gasket is in good condition; and, for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area, and

(2) Release detection equipment - check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and ensure records of release detection testing are reviewed and current.

b. Conduct a walkthrough inspection annually, at a minimum, checking the following equipment as specified below:

(1) Containment sumps - visually check for damage, leaks to the containment area, or releases to the environment; remove liquid (in contained sumps) or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area, and

(2) Hand held release detection equipment - check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;

c. Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to (*a*) and (*b*) of this section; or

d. Conduct operation and maintenance walkthrough inspections developed by the department that checks equipment comparable to (*a*) and (*b*) of this section.

e. Owners and operators must maintain records (in accordance with 135.4(5)) of operation and maintenance walkthrough inspections for 12 consecutive months. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

Note to paragraph c: the following code of practice may be used to comply with paragraph c of this section: Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems".

ITEM 131. Amend paragraph **135.5(1)"a"** as follows:

a. Owners and operators of ~~new and existing~~ UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Is installed, and calibrated~~, operated, and maintained~~ in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Beginning October 13, 2021 is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following:

1. Manufacturer's instructions;

2. A code of practice developed by a nationally recognized association or independent testing laboratory; or

3. Requirements determined by the department to be no less protective of human health and the environment than the two options listed above.

(4) A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

1. Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

2. Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability or running condition and communication with controller;

3. Automatic line leak detector: test operation to meet criteria in 135.5(5)"*a*" by simulating a leak;

4. Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

5. Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

Note to paragraph (a)(3): The following code of practice may be used to comply with paragraph (a)(3) of this section: Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

~~(3)~~(5) Meets the performance requirements in 135.5(4) or 135.5(5), with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods conducted in accordance with 135.5(4)*"b," "c,"* and *"d"* and 135.5(5)"*a*" and *"b"* ~~after December 22, 1990 and 135.5(5)"*a*" after September 22, 1991, except for methods permanently installed prior to those dates~~ must be capable of detecting the leak rate or quantity specified for that method with a probability of detection of 0.95 and a probability of false alarm of 0.05.

ITEM 132. Amend paragraph **135.5(1)"b"** as follows:

b. When a release detection method operated in accordance with the performance standards in 135.5(4)

~~and~~ or 135.5(5) indicates a release may have occurred, owners and operators must notify the department in accordance with rule 567—135.6(455B).

ITEM 133. Rescind paragraph **135.5(1)"c"** and adopt the following **new** paragraph in lieu thereof:

c. When an owner and operator continually shows the inability to conduct leak detection with the method being used, the department may require the owner and operator to find an alternative leak detection method. If the owner and operator cannot demonstrate compliance with leak detection, delivery prohibition in accordance with 135.3(8) may be enforced.

ITEM 134. Amend paragraph **135.5(1)"d"** as follows:

d. Any ~~existing~~ UST system that cannot apply a method of release detection that complies with the requirements of this rule must complete the closure procedures in rule 567—135.15(455B). ~~by the date on which release detection is required for that UST system under paragraph "*c.*"~~ For previously deferred UST systems described in 567-135.1(455B) and 567-135.21(455B), this requirement applies after the effective dates described in 135.1(3) and 135.21(1)*"a"*.

ITEM 135. Amend paragraph **135.5(2)"a"** as follows:

a. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in 135.5(4)*"d"* to ~~*"h"*~~ *"i"* except that:

(1) ~~UST systems~~ Tanks installed after November 28, 2007 must use interstitial monitoring of the secondary containment as the primary leak detection method in accordance with 135.5(4)*"g"*.~~that meet the performance standards in 135.3(1) or 135.3(2), and the monthly inventory control requirements in 135.5(4)"*a*" or "*b*," may use tank tightness testing (conducted in accordance with 135.5(4)"*c*") at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under 135.3(2)"*b*," whichever is later~~;

~~(2) UST systems that do not meet the performance standards in 135.3(1) or 135.3(2) may use monthly~~

~~inventory controls (conducted in accordance with 135.5(4)"*a*" or "*b*") and annual tank tightness testing (conducted in accordance with 135.5(4)"*c*") until December 22, 1998, when the tank must be upgraded under 135.3(2) or permanently closed under 135.15(2); and~~

~~(3)~~ (2) Tanks installed on or before November 28, 2007, with capacity of 550 gallons or less ~~may use weekly~~ and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in 135.5(4)*"b"* may use manual tank gauging conducted in accordance with 135.5(4)"*b*".

ITEM 136. Amend paragraph **135.5(2)"b"** as follows:

b. *Piping.* Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) *Pressurized piping.* Underground piping that conveys regulated substances under pressure must:

1. Be equipped with an automatic line leak detector conducted in accordance with 135.5(5)*"a"*; and

2. Have an annual line tightness test conducted in accordance with 135.5(5)*"b"* or have monthly monitoring conducted in accordance with 135.5(5)*"c."* Piping installed after November 28, 2007, must use interstitial monitoring of the piping secondary containment in accordance with 135.5(5)*"d".*

(2) *Suction piping.* Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with 135.5(5)*"b,"* or use a monthly monitoring method conducted in accordance with 135.5(5)*"c."* Remote fill is considered suction piping. No release detection is required for suction piping that is designed and constructed to meet the following standards:

1. The below-grade piping operates at less than atmospheric pressure;

2. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

3. Only one check valve is included in each suction line;

4. The check valve is located directly below and as close as practical to the suction pump; and

5. A method is provided that allows compliance with "2" through "4" to be readily determined.

(3) Piping installed or replaced must meet one of the following:

1. Pressurized piping must be monitored for releases at least every 30 days in accordance with 135.5(5)"d" and be equipped with an automatic line leak detector.

2. Suction piping must be monitored for releases at least every 30 days. No release detection is required for suction piping that meets paragraphs (b)(2)(1) through (5) of this section.

ITEM 137. Rescind subrule 135.5(3) and adopt the following **new** subrule in lieu thereof:

135.5(3) *Requirements for hazardous substance UST systems.* Owners and operators of hazardous substance UST systems must have containment that meets the following requirements and monitor these systems using 135.5(4)"g" at least every 30 days:

a. Secondary containment systems must be designed, constructed and installed to:

(1) Contain regulated substances leaked from the primary containment until they are detected and removed;

(2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(3) Be checked for evidence of a release at least every 30 days.

b. Double-walled tanks must be designed, constructed, and installed to:

(1) Contain a leak from any portion of the inner tank within the outer wall; and

(2) Detect the failure of the inner wall.

c. External liners (including vaults) must be designed, constructed, and installed to:

(1) Contain 100 percent of the capacity of the largest tank within its boundary;

(2) Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(3) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

d. Underground piping must be equipped with secondary containment that satisfies the requirements

of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with 135.5(5)*"a"*;

e. For hazardous substance UST systems installed on or before November 28, 2007, other methods of release detection may be used if owners and operators:

(1) Demonstrate to the department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in 135.5(4)*"b"* to *"i"* can detect a release;

(2) Provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

(3) Obtain approval from the department to use the alternate release detection method before the installation and operation of the new UST system.

ITEM 138. Amend paragraph **135.5(4)"a" "NOTE"** as follows:

NOTE: Practices described in the American Petroleum Institute Recommended Practice 1621, "~~Publication~~ Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of subrule 135.5(4), paragraph *"a,"* subparagraphs (1) to (6).

ITEM 139. Rescind paragraph **135.5(4)"b"** and adopt the following **new** paragraph in lieu thereof:

b. Manual tank gauging. Manual tank gauging must meet the following requirements:

(1) Tank liquid level measurements are taken at the beginning and end of the test period during which no liquid is added to or removed from the tank;

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(3) The equipment is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch;

(4) A release is suspected and subject to the requirements of rule 135.6(455B) if the variation between the beginning and ending measurements exceeds the weekly or monthly standards in the following table. Immediately contact the department if these standards are exceeded.

Nominal Tank Capacity	Minimum Duration Of Test	Weekly Standard (1 test)	Monthly Standard (4-test average)
550 gallons or less	36 hours	10 gallons	5 gallons
551-1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551-1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551-1,000 gallons (also requires annual tank tightness testing)	36 hours	13 gallons	7 gallons
1,001-2,000 gallons (also requires annual tank tightness test)	36 hours	26 gallons	13 gallons

(5) Only those tanks of 550 gallons or less nominal capacity or tanks of 551 to 1,000 gallons nominal capacity with diameters of 64 inches or 48 inches may use this as the sole method of release detection. Other tanks of 551 to 2,000 gallons may use this method in place of inventory control in 135.5(4) "a." Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this rule.

ITEM 140. Amend paragraph **135.5(4)"c"** as follows:

c. Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon-per-hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

The tank tightness test procedure must be certified by a third party and meet US EPA testing procedures. The testing procedures are found in *Standard Test Procedures for Evaluating Leak Detection Methods:*

Volumetric Tank Tightness Testing Methods (EPA /530/UST-90/004) March 1990 or as revised by EPA or *Non Volumetric Tank Tightness Testing Methods* (EPA /530/UST-90/005) March 1990 or as revised by EPA.

ITEM 141. Amend paragraph **135.5(4)"d"** as follows:

d. Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product; ~~and~~

(2) The automatic tank gauging equipment must meet the inventory control (or ~~another~~ other test of equivalent performance) ~~is conducted in accordance with the~~ requirements of 135.5(4)"*a.*";

(3) The leak test must be performed according to manufacturer specifications;

(4) The automatic tank gauging equipment must be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Leak Detection Methods: Automatic Tank Gauging Systems (ATGS)* (EPA /530/UST-90/006) March 1990 or as revised by US EPA; and

(5) The test must be performed with the system operating in one of the following modes:

1. In-tank static testing conducted at least once every 30 days; or

2. Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.

ITEM 142. Amend subparagraph **135.5(4)"e"(6)** as follows:

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in 135.5(4)"*e*"(1) ~~to~~ through (4) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

ITEM 143. Adopt the following **new** subparagraph **135.5(4)"e"(8)**:

(8) The vapor product detector must be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Leak Detection Methods: Vapor-Phase Out-of-Tank Product Detectors* (EPA /530/UST-90/008) March 1990 or as revised by US EPA.

ITEM 144. Amend subparagraph **135.5(4)"f"(7)** as follows:

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in 135.5(4)"*f*"(1) ~~to~~ through (5) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

ITEM 145. Amend paragraph **135.5(4)"g"** as follows:

g. Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For secondary containment systems, the sampling or testing method must be able to detect a ~~release~~leak through the inner wall in any portion of the tank that routinely contains product:

1. Continuously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space; or

2. Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.

3. The interstitial space shall be maintained and kept free of liquid, debris or anything that could interfere with leak detection capabilities.

~~NOTE: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled~~

~~tanks.~~

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a ~~release~~ leak between the UST system and the secondary barrier:

1. The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a ~~release~~ leak to the monitoring point and permit its detection;

2. The barrier is compatible with the regulated substance stored so that a ~~release~~ leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

3. For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

4. The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

5. The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

6. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a ~~release~~ leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

ITEM 146. Adopt the following **new** paragraph **135.5(4)"h"**. Reletter the current paragraph 135.5(4)"h" to "i."

h. Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data that test for the loss of product must meet the following requirements:

(1) Use a leak threshold that does not exceed one-half the minimum detectible leak rate;

(2) The statistical test must be able to detect at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

(3) The report by the SIR company must be a quantitative result with a calculated leak rate and

includes the leak threshold (leak rate at which a leak is declared), the calculated leak rate (leak rate calculated from the inventory records) and minimum detectable leak rate (minimum leak rate that can be determined from the inventory records).

1. A "Pass" means that the calculated leak rate for the data set is less than the leak threshold and the minimum detectable leak rate is less than or equal to the certified performance standard;

2. A "Fail" means the calculated leak rate for the data set is equal to or greater than the leak threshold;

3. An "inconclusive" means the minimum detectable leak rate exceeds the certified performance standard and the calculated leak rate is less than the leak threshold. If for any other reason the test result is not a "pass" or "fail" the result is "inconclusive";

(4) Owners and operators must notify the department in accordance with rule 135.6 when a monthly SIR report of "fail" occurs or two consecutive inconclusive results occur.

(5) Owners and operators must assure the SIR analytical results are complete and available to the department upon request.

(6) The statistical inventory reconciliation method must be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Leak Detection Methods: Statistical Inventory Reconciliation Methods (SIR)* (EPA /530/UST-90/007) March 1990.

ITEM 147. Amend paragraphs **135.5(5)"a"** to **"c"** as follows:

a. Automatic line leak detectors. Methods which alert the operator to the presence of a leak in pressurized piping by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with ~~the manufacturer's requirements~~ 135.5(1)*"a".*

b. Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at one and one-half times the operating pressure. The line leak detection method must

be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Leak Detection Methods: Pipeline Leak Detection Methods (SIR)* (EPA /530/UST-90/007) March 1990.

c. Applicable tank methods. Except as described in 135.5(2)"*a*", any ~~Any~~ of the methods in 135.5(4)"*e*" through ~~"*h*"~~ "*i*" may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

ITEM 148. Amend subparagraph **135.5(5)"d"(1)** as follows:

1. ~~Continously~~Continuously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space or containment sump; or

ITEM 149. Amend paragraphs **135.5(6)"a"** and **"b"** as follows:

a. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for five years, or for another reasonable period of time determined by the department, from the date of installation. Records of site assessments required for vapor monitoring under 135.5(4)"*e*"(6) and groundwater monitoring under 135.5(4)"*f*"(7) must be maintained for as long as the methods are used. Records of site assessments must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department;

b. The results of any sampling, testing, or monitoring must be maintained for at least one year, or for another reasonable period of time determined by the department, except ~~that the results of tank tightness testing conducted in accordance with 135.5(4)"*c*" must be retained until the next test is conducted; and~~ as follows:

(1) The results of tank tightness testing conducted in accordance with 135.5(4)"*c*" must be retained until the next test is conducted; and

(2) The results of annual operation tests conducted in accordance with 135.5(1)"*a*"(3) and (4) must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in 135.5(1)"*a*"(3) and (4), or needs to have action taken, and describe any action

taken to correct an issue; and

(3) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with 567-135.21(2)"*f*" must be retained until the next test is conducted; and

ITEM 150. Amend paragraphs **135.6(1)"b"** and **"c"** as follows:

b. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, ~~or~~ an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless ~~system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and~~:

(1) The system equipment or component is found not to be releasing regulated substances to the environment;

(2) Any defective system equipment or component is immediately repaired or replaced; and

(3) For secondarily contained systems, except as provided for in 135.5(4)"g"(2)(4), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.

c. Monitoring results, including investigation of an alarm, from a release detection method required under 135.5(2) and 135.5(3) that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; ~~or~~

(2) The leak is contained in the secondary containment and:

1. Except as provided for in 135.5(4)"g"(2)(4), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

2. Any defective system equipment or component is immediately repaired or replaced;

(3) In the case of inventory control, a second month of data does not confirm the initial result or the investigation determines no release has occurred; or

(4) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

ITEM 151. Amend paragraph **135.6(3)"a"** as follows:

a. System test. Owners and operators must conduct tests (according to the requirements for tightness testing in 135.5(4)"c" and 135.5(5)"b") or, as appropriate, secondary containment testing described in 135.4(4)"d").~~that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping or both.~~

(1) The test must determine whether:

1. A leak exists in that portion of the tank that routinely contains product, or the attached delivery piping; or

2. A breach of either wall of the secondary containment has occurred.

~~(1)~~(2) If the system test confirms a leak into the interstice or a release, owners ~~Owners~~ and operators must repair, replace, ~~or~~ upgrade, or close the UST system. ~~and~~ In addition, owners and operators must begin corrective action in accordance with rule 567—135.9(455B) if the test results for the system, tank, or delivery piping indicate a ~~leak~~ release exists.

~~(2)~~(3) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate a ~~leak~~ release exists and if environmental contamination is not the basis for suspecting a release.

~~(3)~~(4) Owners and operators must conduct a site check as described in paragraph "b" of this subrule if the test results for the system, tank, and delivery piping do not indicate a ~~leak~~ release exists but environmental contamination is the basis for suspecting a release.

ITEM 152. Amend subparagraph **135.6(4)"a"(2)** as follows:

(2) Spill, overfill or any aboveground release of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR 302) ~~as of September 13, 1988~~.

ITEM 153. Amend subrule **135.7(3),** introductory paragraph, as follows:

135.7(3) *Initial abatement measures ~~and site check~~*.

ITEM 154. Amend subrule **135.7(5)**, introductory paragraph, as follows:

135.7(5) *Free product assessment and removal.* The free product assessment and removal requirements in this chapter are primarily concerned with a regulated substance that is present as a light nonaqueous phase liquid (LNAPL) in a monitoring well, boring, excavation, or other location at a thickness of more than 0.01 feet. At sites where investigations under 135.7(3)*"a"*(6) indicate 0.01 ft. or more of free product, owners and operators must immediately initiate a free product recovery assessment and submit a report in accordance with paragraph *"d"* and initiate interim free product removal while continuing, as necessary, any actions initiated under 135.7(2) ~~to~~and ~~135.7(4)~~135.7(3), or preparing for actions required under 567—135.8(455B) to 567—135.12(455B). Owners and operators must immediately begin interim free product removal by bailing or by installation and maintenance of passive skimming equipment until an alternative removal method is required by or approved by the department. A certified groundwater professional must initially determine the frequency of bailing and proper installation and maintenance of the skimming equipment based on a determination of the recharge rate of the free product. The department may approve implementation of this interim removal process by persons not certified as groundwater professionals. For approval a certified groundwater professional must submit (1) sufficient documentation establishing that the bailing or skimming system has been adequately designed and tested, and (2) a written plan for regular maintenance, reporting and supervision by a certified groundwater professional. Interim free product recovery reports must be submitted to the department on a monthly basis and on forms provided by the department. In meeting the requirements of this subrule, owners and operators must:

ITEM 155. Amend subparagraphs **135.7(5)"d"(9)** and **(10)** as follows:

(9) Free product plume definition and map. The extent of free product ~~in groundwater~~ must be assessed. If monitoring wells are used to define the free product plume, the ~~The~~ number and location of wells and

separation distance between the wells used to define the ~~free product~~ plume must be based on the receptors present and the site hydrology and geology. A minimum of five monitoring wells are required to construct the plume map. The boundary of the plume may be determined by half the distance between wells with free product and wells with no free product. If the groundwater professional can adequately define the plume using other technology as ~~specified in~~ approved by the department ~~guidance~~, fewer than five wells may be used ~~the boundary of the plume may be determined by the linear interpolation consistent with the methods described in 135.10(2)"*f*"(3); and~~to define the boundary of the plume.

(10) The estimated volume of free product present, how the volume was calculated, recoverable volume and estimated recovery time; and

ITEM 156. Adopt the following **new** subparagraph **135.7(5)"d"(11)**:

(11) Identification of all water lines, regardless of construction material, within the area of free product. A water line shall be considered within the area of free product if it is located within the boundary of the free product plume as defined by wells unless it can be demonstrated that no LNAPL exists within 10 feet (horizontally or vertically) of the water line and the LNAPL is not migrating nor is likely to migrate. Water lines within the area of free product must be relocated unless there is no other option and the department has approved an alternate plan of construction. See 135.12(3) "c".

ITEM 157. Amend paragraph **135.7(5)"f"** as follows:

f. Termination of free product recovery activities. Owners and operators may propose to the department to terminate free product recovery activities when significant amounts of hydrocarbons are not being recovered. The department will consider proposals to terminate free product recovery when the amount of product collected from a monitoring well is equal to or less than 0.1 gallon each month for a year unless another plan is approved by the department. When free product activities have been terminated, owners and operators must inspect the monitoring wells monthly for at least a year unless another schedule is approved by the department. The department must be notified and can require free product recovery activities be reinitiated if during the

monthly well inspections it is determined the product thickness in a monitoring well exceeds 0.02 foot. The monthly well inspection records must be kept available for review by the department.

ITEM 158. Amend paragraph **135.8(1)"a"** as follows:

a. Tier 1. The purpose of a Tier 1 assessment is to identify ~~sites which do not pose~~ whether a site poses an unreasonable risk to public health and safety or the environment based on limited site data. The objective is to determine maximum concentrations of chemicals of concern at the source of a release(s) in soil and groundwater. The Tier 1 assessment assumes worst-case scenarios in which actual or potential receptors could be exposed to these chemicals at maximum concentrations through certain soil and groundwater pathways. The point of exposure is assumed to be the source showing maximum concentrations. Risk-based screening levels (Tier 1 levels) contained in the Tier 1 Look-Up Table have been derived from models which use conservative assumptions to predict exposure to actual and potential receptors. (These models and default assumptions are contained in Appendix A.) If Tier 1 levels are not exceeded for a pathway, that pathway may not require further assessment. If the maximum concentrations exceed a Tier 1 level, the options are to conduct a more extensive Tier 2 assessment, apply an institutional control, or in limited circumstances excavate contaminated soil to below Tier 1 levels. If all pathways clear the Tier 1 levels, it is possible for the site to obtain a no action required classification.

ITEM 159. Amend subrule 135.8(3) as follows:

135.8(3) *Chemicals of concern.* Soil and groundwater samples from releases of petroleum regulated substances must always be analyzed for the presence of benzene, ethylbenzene, toluene, and xylenes. In addition, if the release is suspected to include any petroleum regulated substance other than gasoline or gasoline blends, or if the source of the release is unknown, the samples must be tested for the presence of Total Extractable Hydrocarbons (TEH). Appendices A and B and department Tier 2 guidance define a method for converting TEH values to a default concentration for naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene and conversion back to a representative TEH value. These default values must be used in order to apply Tier 2

modeling to these constituents in the absence of accurate laboratory analysis. ~~At Tier 2 and Tier 3, owners and operators have the option of analyzing for these specific constituents and applying them to the specific target levels in Appendices A and B instead of using the TEH conversion method if an approved laboratory and laboratory technique are used.~~

ITEM 160. Amend subrule **135.9(1)**, introductory paragraph, as follows:

135.9(1) *General.* The main objective of a Tier 1 site assessment is to reasonably determine the highest concentrations of chemicals of concern which would be associated with any suspected or confirmed release and an accurate identification of applicable receptors. The potential source of a release, nature of the substance released, site stratigraphy, depth to groundwater, and other appropriate factors must be considered when selecting the sample types, sample locations, and measurements methods. ~~In addition, the~~ The placement and depth of borings and the construction of monitoring wells must be sufficient to determine the sources of all releases, the vertical extent of contamination, an accurate description of site stratigraphy, and a reliable determination of groundwater flow direction.

ITEM 161. Amend paragraphs **135.9(1)"b"** and **"c"** as follows:

b. Pathway clearance. If ~~field data~~ contaminant concentrations for an individual pathway do not exceed the applicable Tier 1 levels or if a pathway is incomplete, no further action is required to evaluate the pathway unless otherwise specified in these rules. If the ~~field data~~ contaminant concentrations for a pathway exceed the applicable Tier 1 level(s) in the "Iowa Tier 1 Look-up Table," the response is to conduct further assessment under Tier 2 or Tier 3 unless an effective institutional control is approved. In limited circumstances excavation of contaminated soils may be used as an option to obtain pathway clearance. If further site assessment indicates site data exceeds an applicable Tier 1 level(s) for a previously cleared pathway or the conditions justifying a determination of pathway incompleteness change, that pathway must be reevaluated as part of a Tier 2 or Tier 3 assessment.

c. Chemical group clearance. If ~~field data~~ concentrations for all chemicals of concern within a designated group of chemicals are below the Tier 1 levels, no further action is required as to the group of chemicals unless otherwise specified in these rules. Group one consists of benzene, ethylbenzene, toluene, and xylenes (BTEX). Group two consists of naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene; TEH default values are incorporated into the Iowa Tier 1 Look-Up Table and Appendix A for group two chemicals.

ITEM 162. Amend paragraph **135.9(3)"n"** as follows:

n. A Tier 1 site assessment in accordance with the department's Tier 1 guidance. The Tier 1 report shall be submitted on forms and in a format prescribed by this guidance. ~~The Tier 1 data analysis shall be performed by using computer software developed by the department or by using the computer software's hard-copy version.~~

ITEM 163. Amend paragraph **135.9(7)"e"** as follows:

e. Soil gas samples. To establish that the soil gas measurement is representative of the highest expected levels, a groundwater professional must obtain two soil gas samples taken at least two weeks apart. ~~One of the samples must be taken below the typical frost line depth during a seasonal period of lowest groundwater elevation.~~ One of the samples should be collected beneath the frost line depth during a seasonal period of lowest groundwater elevation.

ITEM 164. Amend paragraph **135.9(7)"h"** as follows:

h. Soil excavation. Excavation of contaminated soils for the purpose of removing soils contaminated above the Tier 1 levels is permissible as an alternative to conducting a Tier 2 assessment. Adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum, one soil sample must be taken for field screening every 100 square feet of the base and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm that remaining concentrations are below Tier 1 levels. If the base or a sidewall of the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base.

ITEM 165. Rescind paragraph **135.9(11)"g".**

ITEM 166. Amend paragraph **135.10(1)"a"** as follows:

a. Guidance. The Tier 2 site assessment shall be conducted in accordance with the department's "Tier 2 Site Assessment Guidance" and these rules. The site cleanup report shall be submitted on forms and in a format prescribed by this guidance. The Tier 2 data analysis shall be performed by using computer software or on-line application developed by the department ~~or by using the computer software's hard-copy version~~.

ITEM 167. Rescind subparagraph **135.10(2)"f"(3).**

ITEM 168. Amend paragraphs **135.10(2)"g"** and **"h"** as follows:

g. Modeled simulation line. The simulation line represents the predicted maximum extent of groundwater contamination and distribution of contaminant concentrations between the source(s) and actual or potential receptor locations. The model calculates the simulation line using maximum concentrations at the source(s) and predicting the amount of dispersion and degradation. Modeled data in the simulation line are compared with actual ~~field data~~ contaminant concentrations to verify the predictive validity of the model and to make risk classification decisions.

h. Modeled site-specific target level (SSTL) line. The modeled SSTL line represents acceptable levels of contaminant concentrations at points between and including the source(s) and an applicable point(s) of exposure or other point(s) of compliance (ex. a potential receptor point of exposure). The SSTL line is calculated by assuming an applicable target level concentration at the point(s) of exposure or point(s) of compliance and modeling back to the source to determine the maximum concentrations at the source (SSTL) that must be achieved to meet the target level at the point of exposure or compliance. Comparison of ~~field data~~ contaminant concentrations from actual samples to this SSTL line is used to determine a risk classification and determine appropriate corrective action response.

ITEM 169. Rescind paragraph **135.10(2)"m."**

ITEM 170. Amend subparagraphs **135.10(3)"a"(2)** and **(3)** as follows:

(2) Granular bedrock. Granular bedrock is bedrock which is determined to act as a granular aquifer and for which monitoring wells do not exist at the source ~~as of August 15, 1996~~. For purposes of this rule, a granular aquifer is one that shows no extraordinary variations or inconsistencies in groundwater elevations across the site, groundwater flow, hydraulic conductivities, or total dissolved solid concentrations among monitoring wells. Although the extent of contamination can be defined in granular bedrock, groundwater transport modeling cannot be used because ~~there are no~~ monitoring wells shall not be installed at the source if soil contamination is present. If soil contamination above a Tier 1 level is not identified or an over-excavation of contaminated soil has successfully removed all soil contamination greater than a Tier 1 level, then monitoring wells can be installed in the source area and the site can be evaluated as exempt granular bedrock.

(3) Exempt granular bedrock. Exempt granular bedrock is bedrock which is determined to act as a granular aquifer as provided in subparagraph (2) and for which monitoring wells exist at the source as of August 15, 1996. Sites in exempt granular bedrock shall be evaluated using ~~the normal~~ regular Tier 1 ~~or~~ and Tier 2 procedures in this rule. ~~Nongranular bedrock is not exempt from this subrule even if groundwater monitoring wells exist at the source.~~ Note: Non-granular bedrock is subject to special bedrock assessment procedures even if groundwater monitoring wells exist at the source, because the flow is not predictable by the Tier 2 model.

ITEM 171. Amend paragraph **135.10(3)"b"** as follows:

b. Exempt soil pathways. The soil vapor to enclosed space pathway and the soil to ~~plastic~~ water lines pathway shall be assessed under the ~~normal~~ regular Tier 2 procedures in subrules 135.10(7) and 135.10(9) respectively. In all cases, the ~~normal~~ assessment must comply with the policy of avoiding a preferential pathway to groundwater consistent with 135.8(5) and this subrule.

ITEM 172. Amend subparagraph **135.10(3)"g"(2)** as follows:

(2) Groundwater well receptor evaluation for granular and nongranular bedrock designations. All drinking and non-drinking water wells within 1,000 feet of the source must be identified and tested for chemicals of concern. All public water supply systems within one mile of the source must be identified and raw water tested for chemicals of concern. ~~If no drinking water wells are located within 1,000 feet of the source, all the~~ All area within 1,000 feet of the source is considered a potential receptor point of exposure.

ITEM 173. Amend subparagraph **135.10(3)"i"(2)** as follows:

(2) High risk classification. A site designated as granular or nongranular bedrock shall be classified high risk for this pathway if the highest groundwater elevation is ~~higher than~~ within three feet ~~below~~ of the bottom of a water line as provided in 135.10(8)*"a"*(1), risk classification cannot be determined as provided in 567—135.12(455B) due to limitations on placement of monitoring wells, and water lines exist within 200 feet of a monitoring well which exceeds the Tier 1 level.

ITEM 174. Amend subparagraph **135.10(3)"j"(1)** as follows:

(1) Point of compliance. The monitoring well closest to the surface water body must be used as the point of compliance to evaluate impacts to designated use segments as described in 135.10(10) and for general use segments that fail the visual inspection criteria of 135.10(10)*"b."* If the surface water criteria ~~is~~ are exceeded for a designated use segment, an allowable discharge concentration must be calculated and met at the point of compliance. For general use segments failing the visual inspection criteria, the acutely toxic target level must be met at the point of compliance.

ITEM 175. Amend subparagraphs **135.10(3)"k"(1)** and **(2)** as follows:

(1) Groundwater ingestion pathway. For high risk sites, where soil exceeds the soil leaching to groundwater Tier 1 level for actual receptors, soil excavation or other active remediation of soils must be conducted in accordance with department guidance to reduce soil concentrations to below the soil leaching Tier

1 level. Corrective action other than monitoring of groundwater is required at sites designated as nongranular bedrock if the actual receptor has been or is likely to be impacted. Corrective action other than monitoring of groundwater is required at sites designated as granular bedrock if the actual receptor has been impacted or the sentry well required by 135.10(3)*"g"*(4) has been impacted above Tier 1 levels. Acceptable corrective action for impacted or vulnerable groundwater wells may include active remediation, technological controls, institutional controls, well plugging, relocation, and well reinstallation with construction measures sufficient to prevent contaminant infiltration to the well and to prevent formation of a preferential pathway.

(2) Groundwater ingestion pathway high risk monitoring. For high risk sites designated as nongranular or granular bedrock, if the soil concentrations do not exceed the soil leaching to groundwater Tier 1 levels or have been reduced to this level by corrective action, and corrective action of groundwater is not required as in subparagraph (1), these sites shall be subject to groundwater monitoring as provided in paragraph *"l."* Corrective action other than monitoring of groundwater is required at sites designated as granular bedrock if groundwater concentrations exceed the applicable target level less than 200 feet from an actual receptor. Reevaluation of the potential for impact to actual receptors is required at sites designated as nongranular bedrock if concentrations from monitoring wells ~~increases~~ increase more than 20 percent of the previous samples.

ITEM 176. Amend subparagraphs **135.10(3)"m"(1)** and **(2)** as follows:

(1) Groundwater in nongranular bedrock designations. Exit monitoring requires that samples from all groundwater monitoring wells must not exceed the applicable target levels for annual sampling for three consecutive years. If soil contamination above a Tier 1 level is not identified or if an over-excavation of contaminated soil has successfully removed all soil contamination greater than a Tier 1 level and monitoring wells are installed in the source area, exit monitoring criteria may be met by two consecutive samples collected at least six months apart; and concentrations in all monitoring wells must be less than the lowest target level.

(2) Groundwater in granular bedrock designations. Exit monitoring must be met in two ways: A monitoring well between the source and the receptor must not exceed applicable target levels for three sampling events, and samples must be separated by at least six months; and the three most recent consecutive groundwater

samples from a monitoring well between the source and the receptor with detected levels of contamination must show a steady or declining trend and meet the following criteria: The first of the three samples must be ~~more~~ greater than detection limits, concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent ~~of~~ from the previous sample; and samples must be ~~separated by~~ collected at least six months apart.

ITEM 177. Amend paragraph **135.10(4)"j"** as follows:

j. Use of institutional controls. ~~The use of institutional~~ Institutional controls may be used to obtain no action required pathway classification. If the pathway is complete and the concentrations exceed the applicable Tier 1 level(s) for actual receptors, the drinking or non-drinking water well must be properly plugged in accordance with 567—Chapters 39 and 49 and the institutional control must prohibit the use of a protected groundwater source (if one exists) within the actual or modeled plume as provided in 135.10(2)"j" and 135.10(2)"k." If the Tier 1 level is exceeded for potential receptors, the institutional control must prohibit the use of a protected groundwater source within the actual or modeled plume, whichever is greater. If concentrations exceed the Tier 1 level for drinking water wells and the groundwater is a protected groundwater source, the owner or operator must provide notification of the site conditions on a department form to the department water supply section, or if a county has delegated authority, then the designated county authority responsible for issuing private water supply construction permits or regulating non-public water well construction as provided in 567—Chapters 38 and 49.

ITEM 178. Amend paragraph **135.10(6)"g"**, introductory paragraph, as follows:

g. Pathway evaluation and classification. Upon completion of ~~analysis~~ evaluation of ~~field data~~ analytical results of appropriate samples and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B).

ITEM 179. Amend paragraph **135.10(8)"d"** as follows:

d. Pathway evaluation and classification. Upon completion of ~~analysis~~ evaluation of ~~field data~~ analytical results of appropriate samples and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B). The water quality inside the water lines is not a criterion for clearance of this pathway.

ITEM 180. Amend paragraph **135.10(9)"d"** as follows:

d. Pathway classification. Upon completion of ~~analysis~~ evaluation of ~~field data~~ analytical results of appropriate samples, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B). Measurements of water quality inside the water lines may be required, but are not allowed as criteria to clear this pathway.

ITEM 181. Amend paragraph **135.10(10)"e"** as follows:

e. Target Levels. Determining target levels for this pathway involves a two-step process.

(1) Groundwater modeling as provided in 135.10(2) must be used to calculate the projected concentrations of chemicals of concern at the point of compliance. If the modeled concentrations or field data at the point of compliance exceed surface water criteria for designated use segments, an allowable discharge concentration must be calculated. If the projected concentrations and ~~field data~~ actual concentrations at the point of compliance do not exceed surface water criteria, no further action is required to assess this pathway.

(2) The department water quality section will calculate the allowable discharge concentration using information provided by the certified groundwater professional on a department form. Required information includes, at a minimum, the site location and a discharge flow rate calculated according to the department's Tier 2 guidance. The allowable discharge concentration is the target level which must be met adjacent to the surface water body which is the point of compliance.

(3) The target level at the point of exposure/compliance for general use segments subject to evaluation is the acutely toxic levels established by the department under 567—Chapter 61 and 567—subrule 62.8(2). If the modeled concentrations of ~~field data~~ contaminant concentrations at the point of exposure/compliance exceed the

acutely toxic levels, modeling must be used to determine site classifications and corrective action in accordance with 567—135.12(455B).

ITEM 182. Amend paragraph **135.10(10)"f"** as follows:

f. Pathway evaluation and classification. Upon completion of ~~analysis of field data~~ evaluation of analytical results of appropriate samples and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B).

(1) For general use segments, as defined in 567—subrule 61.3(1), if the groundwater professional determines there is no sheen or residue present or if the site is not the source of the sheen or residue or if the sheen does not consist of petroleum-regulated substances, no further action is required for assessment of this pathway. If a petroleum-regulated substance sheen is present, the pathway is high risk and subject to classification in accordance with 567—135.12(455B).

(2) For designated use segments, as provided in 567—subrules 61.3(1) and 61.3(5), if projected concentrations of chemicals of concern and ~~field data~~ actual contaminant concentrations at the point of compliance do not exceed the target level adjacent to the surface water, and the groundwater professional determines there is no sheen or residue present, no further action is required for assessment of this pathway.

ITEM 183. Rescind paragraph **135.10(11)"f."** Reletter the following paragraphs.

ITEM 184. Amend subrule **135.12(1)** as follows:

135.12(1) *General.* 1995 Iowa Code section 455B.474(1)*"d"*(2) provides that sites shall be classified as high risk, low risk and no action required. Risk classification is accomplished by comparing actual ~~field data~~ contaminant concentrations to the concentrations that are predicted by the use of models. ~~Field data~~ Concentrations must be compared to the simulation model which uses the maximum concentrations at a source and predicts at what levels actual or potential receptors could be impacted in the future. ~~Field data~~ Concentrations must also be compared to the site-specific target level line which assumes a target level concentration at the point

of exposure and is used to predict the reduction in concentration that must be achieved at the source in order to meet the applicable target level at the point of exposure. These models not only predict concentrations at points of exposure or a point of compliance at a source but also predict a distribution of concentrations between the source and the point of exposure which may also be points of compliance. The comparison of ~~field data~~ contaminant concentrations with these distribution curves primarily is considered for purposes of judging whether the modeled data is reasonably predictive and what measures such as monitoring are prudent to determine the reliability of modeled data and actual ~~field data~~ contaminant concentrations.

For the soil vapor to enclosed space and soil to water line pathways, there are no horizontal transport models to use for predicting future impacts. Therefore, for these pathways, sites are classified as high risk, low risk or no action required based on specified criteria below and in 567—135.10(455B).

ITEM 185. Amend subrule **135.12(2),** introductory paragraph, as follows:

135.12(2) *High risk classification.* Except as provided below, sites shall be classified as high risk if, for any pathway, any actual ~~field data exceeds~~ contaminant concentrations exceed the site-specific target level line at any point for an actual receptor.

ITEM 186. Amend paragraphs **135.12(3)"a"** and **"b"** as follows:

a. Objectives. The primary objectives of corrective action in response to a high risk classification are both short-–term and long-term. The short-term goal is to eliminate or reduce the risk of exposure at actual receptors which have been or are imminently threatened with exposure above target levels. The longer term goal is to prevent exposure to actual receptors which are not currently impacted or are not imminently threatened with exposure. To achieve these objectives, it is the intent of these rules that concentrations of applicable chemicals of concern be reduced by active remediation to levels below the site-specific target level line at all points between the source(s) and the point(s) of exposure as well as to undertake such interim corrective action as necessary to eliminate or prevent exposure until concentrations below the SSTL line are achieved. If it is shown that concentrations at all applicable points have been reduced to below the SSTL line, the secondary objective is to

establish that the ~~field data~~ actual chemical concentrations can be reasonably relied upon to predict future conditions at points of exposure rather than reliance on the modeled data. Reliance on ~~field data~~ actual contaminant concentrations is achieved by establishing through monitoring that concentrations within the contaminant plume are steady or declining. ~~Use of institutional control~~ Institutional controls and technological controls may be used to sever pathways or control the risk of receptor impacts.

b. For the groundwater to water line and soil to water line receptors, these objectives are achieved by active remediation, replacement or relocation of high risk water line receptors ~~from areas within the actual plume plus some added site-specific distance to provide a safety factor to areas outside the site-specific target level line. In areas of free product, all water lines regardless of construction material must be relocated unless there is no other option and the department has approved an alternate plan of construction~~in the actual and modeled plume areas. If water lines and gaskets are replaced in an area of contamination, they must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or Viton gaskets or as otherwise approved by the department. ~~If a service line is replaced and remains in a contaminated area, a backflow preventer shall be installed to prevent impacts to the larger water distribution system.~~

ITEM 187. Adopt the following **new** paragraph **135.12(3)"c"** as follows and re-letter the following paragraphs.

c. In areas of free product, all water lines regardless of construction material, must be relocated unless there is no other option and the department has approved an alternate plan of construction. Refer to 135.7(5)"d"(11). If a service line remains in the area of LNAPL, a backflow preventer shall be installed to prevent impacts to the larger water distribution system.

ITEM 188. Amend subrule 135.12(4) as follows:

135.12(4) *Low Risk Classification.* A site shall be classified as low risk if none of the pathways are high risk and if any of the pathways are low risk. A pathway shall be classified low risk if it meets one of the following

conditions:

a. For actual and potential receptors, if the modeled data and the actual ~~field data~~ concentrations are less than the site-specific target level line, and any of the ~~field data is~~ actual concentrations are greater than the simulation line.

b. For potential receptors, if any actual ~~field data exceeds~~concentrations exceed the site-specific target level line at any point.

c. For the soil leaching to groundwater ingestion pathway where modeling predicts that the Tier 1 levels for potential receptors would be exceeded in groundwater at applicable potential receptor points of compliance and the soil concentration exceeds the soil leaching to groundwater site-specific target level but groundwater concentrations are currently below the Tier 1 level for potential receptors, the site shall be initially classified as low risk and subject to monitoring under 135.12(5)*"d"*(2). If at any time during the three-year monitoring period, groundwater concentrations exceed the Tier 1 level for potential receptors, the site shall be classified as high risk requiring soil remediation in accordance with 135.12(3)*"~~c.~~d."*

ITEM 189. Amend paragraphs **135.12(6)"b"** to **"e"** as follows:

b. For initial classification, groundwater pathways shall be classified as no action required if the ~~field data is~~ contaminant concentrations are below the site-specific target level line and all ~~field data is~~ concentrations are at or less than the simulation line, and confirmation monitoring has been completed successfully. Confirmation sampling for groundwater is a second sample which confirms the no action required criteria.

c. A groundwater pathway shall be reclassified from high risk to no action required if all ~~field data is~~ concentrations are below the site-specific target level and if exit monitoring criteria have been met. Exit monitoring criteria means that the three most recent consecutive groundwater samples from all monitoring wells must show a steady or declining trend and the most recent samples are below the site-specific target level. Other criteria include the following: The first of the three samples for the source well and transition well must be more than detection limits; concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must

be separated by at least six months.

d. A low risk site shall be reclassified as "no action required" if ~~field data is~~contaminant concentrations are below the site-specific target level and if exit monitoring criteria have been met pursuant to 135.12(6)*"c"* or if the site has maintained less than the applicable target level for four consecutive sampling events separated by at least six months as defined in the monitoring plan regardless of exit monitoring criteria and guidance.

e. Confirmation sampling for soil gas and indoor vapor. For the enclosed space pathways, confirmation sampling is required to reasonably establish that the soil gas and indoor vapor samples represent the highest expected levels. A groundwater professional must obtain two samples taken at least two weeks apart. ~~One of the samples must be taken during a seasonal period of lowest groundwater elevation and soil gas samples must be taken below the frost line.~~ One of the samples should be collected beneath the frost line depth during a seasonal period of lowest groundwater elevation.

ITEM 190. Amend paragraph **135.12(9)"d"** as follows:

d. Review. A CADR submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if within 90 days of receipt of a CADR, the department identifies material information in the CADR that is inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based on industry standards, the department may reject the report and require modifications. If the department does not reject the report within 90 days of receipt, the report shall be deemed approved as submitted unless changes to the report are requested by the groundwater professional. The department shall work with the groundwater professional and the owner or operator to correct any materially inaccurate information or to obtain the additional information necessary to determine the appropriate corrective action response as soon as practicable. ~~However, from July 1, 2010, through June 30, 2011, the department shall have 120 days to notify the certified groundwater professional when a report is not accepted based on material information that is found to be inaccurate or incomplete.~~

ITEM 191. Amend paragraph **135.12(10)"b,"** introductory paragraph, as follows:

b. No further action certificate. When the no action required site classification has been determined based on a recommendation of the certified groundwater professional as provided in 135.9(11), 135.10(11) and ~~135.12(12)~~135.12(6) (see also ~~2009~~ Iowa Code 455B.474.1"a"(8)(a) and (c)~~Supplement section 455B.474(1)"h"(1) and (3) as amended by 2010 Iowa Acts, House File 2531, section 174~~), the department shall issue a no further action certificate.

ITEM 192. Amend subparagraph **135.12(10)"b"(9)** as follows:

(9) The owner or operator or other persons conducting corrective action shall be responsible for recording the no further action certificate with the county recorder and return a file-stamped copy to the department within 30 days of the issue date. At its discretion, the department may record the no further action certificate with the appropriate county recorder as authorized in ~~2009~~ Iowa Code 455B.474.1"a"(8)(c)~~Supplement section 455B.474(1)"h"(3) as amended by 2010 Iowa Acts, House File 2531, section 174~~.

ITEM 193. Amend subrule 135.12(11) as follows:

135.12(11) *Expedited corrective action.* An owner, operator or responsible party of a site at which a release of regulated substance is suspected to have occurred may carry out corrective actions at the site so long as the department receives notice of the expedited cleanup activities ~~within~~ prior to 30 calendar days of their commencement; the owner, operator, or responsible party complies with the provisions of these rules; and the corrective action does not include active treatment of groundwater other than:

a. As previously approved by the department; or

b. Free product recovery pursuant to subrule 135.7(5).

c. Soil ~~overexcavation~~ over-excavation. When undertaking ~~excavation~~ over-excavation of contaminated soils, adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum one soil sample must be taken for field screening every 100 square feet of the base

and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm remaining concentrations are below Tier 1 levels. If the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base. The owner or operator must maintain adequate records of the excavation area to document compliance with this procedure unless submitted to the department and must provide it to the department upon request.

ITEM 194. Amend rule 567—135.14(455B) as follows:

567—135.14(455B) Action levels. The following corrective action levels apply to petroleum-regulated substances as regulated by this chapter. These action levels shall be used to determine if further corrective action under 567—135.6(455B) through 567—135.12(455B) or 567—135.15(455B) is required as the result of tank closure sampling under 135.15(3) or other analytical results submitted to the department. The contaminant concentrations must be determined by laboratory analysis as stated in 567—135.16(455B). Final cleanup determination is not limited to these contaminants. The contamination corrective action levels are:

	Soil (mg/kg)	**Groundwater (ug/L)**
Benzene	0.54	5
Toluene	3.2	1,000
Ethylbenzene	15	700
Xylenes	52	10,000
Total Extractable Hydrocarbons - Diesel	3,800	1,200
Total Extractable Hyrdocarbons - Waste Oil		400

ITEM 195. Amend rule 567—135.15(455B), title, as follows:

567—135.15(455B) Out-of-service UST systems, temporary closure, and permanent closure.

ITEM 196. Rescind subrule 135.15(1) and adopt the following **new** subrule in lieu thereof:

135.15(1) *Out-of-service UST systems and temporary closur*e.

a. UST systems not meeting either the performance standards in 135.3(1) for new UST systems or the upgrading requirements in 135.3(2) by December 22, 1998 must be permanently closed according to 135.15(2). The tanks cannot be brought back into use.

b. When an UST system in compliance with new tank standards is out of service for less than three months, owners and operators must:

(1) Continue operation and maintenance of corrosion protection in accordance with subrule135.4(2);

(2) Continue operation and maintenance of any release detection in accordance with rule 135.5(455B) unless the system is empty. The UST system is empty when all materials have been removed using commonly employed practices. No more than 2.5 centimeters (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system may remain in the system;

(3) Comply with rules 135.6(455B) to 135.12(455B) if a release is suspected or confirmed;

(4) Maintain financial responsibility (e.g., insurance) in accordance with 567—Chapter 136. If at any time financial responsibility coverage is or will be terminated, a site check for contamination must be completed before coverage is terminated. A site check must use the closure-in-place sampling procedures in 135.15(3)*"b"* and *"d"* or the Tier 1 site assessment in rule 135.9. If the tanks are located in a contaminated area with active monitoring and remediation, the tank owner may request the department waive the site check providing justification.

(5) Continue to pay the tank management fee as required in subrule 135.3(5).

(6) Continue to have compliance inspections conducted as required in rule 135.20.

c. When an UST system is out of service for three months or more, an owner must submit a notification of temporary closure form to the department. Owners and operators must complete the requirements in paragraph *"b"* above for temporary closure and certify the following:

(1) The UST system is empty of all regulated substances (e.g., receipt of product removal).

(2) Vent lines are open and functioning.

(3) All other piping, pumps, accesses, and ancillary equipment are capped and locked.

(4) The corrosion protection system is being maintained in accordance with subrule 135.4(2). Include documentation that electricity is being maintained to operate the impressed current cathodic protection system if present.

(5) For lined tanks, provide a copy of the last internal inspection.

(6) Provide proof of financial responsibility (e.g., insurance) according to 567—Chapter 136.

d. When a tank system is temporarily closed for more than 12 months, the owner must remain in compliance with the department's temporary closure requirements in paragraph "*c*" above. The department may provide an extension to the 12-month temporary closure period. Owners and operators must complete a site check in accordance with 135.6(3)"b" before such and extension can be applied for.

e. If a tank system is temporarily closed for more than 12 months, but the tank system has not been temporarily closed according to the requirements of paragraph "*c*" above, or the owner or operator has failed to maintain out-of-service requirements in paragraph "*b*" above, the UST system must be permanently closed in accordance with 135.15(2).

f. Prior to returning a temporarily closed tank back into service, the owner or operator must complete and submit the department's return to service form signed by a licensed installer, and provide the following documentation. The tank system cannot be operated or receive fuel until current tank tags have been issued.

(1) Tanks were temporarily closed in accordance with subrule 135.15(1).

(2) Where applicable, corrosion protection has been maintained continuously in accordance with subrule 135.4(2). Provide an inspection log of the cathodic protection system and the inspection report of the cathodic protection system completed by an Iowa licensed corrosion tester.

(3) For lined tanks, provide a lining and tank integrity inspection report.

(4) Results of precision tightness tests (0.1 gph) conducted on tanks in accordance with rule 135.5(455B).

(5) Results of precision tightness tests (0.1 gph) conducted on lines in accordance with rule 135.5(455B). This includes piping used for remote fill.

(6) Function test (3.0 gph) results of mechanical or electronic leak detectors conducted in accordance with rule 135.5(455B). NOTE: not required on confirmed “safe suction” dispensing lines.

(7) Tank and piping leak detection is operational and in good condition.

(8) Secondary containment is installed where necessary in accordance with subrule 135.3(9).

(9) Spill containment, overfill prevention and all containment sumps are in good condition and operating in accordance with subrule 135.4(1). Tightness tests conducted within the last 12 months must be provided for secondary containment of tanks, piping, sumps, under dispenser containment and spill containment.

(10) Copy of the financial responsibility (e.g., UST insurance) mechanism in accordance with 567—Chapter 136.

(11) Certification from an Iowa licensed installer that the UST system and equipment are installed correctly, in good operable condition and meet all regulatory requirements for startup and operation.

(12) Copies of Class A and Class B operator training certificates.

(13) Change of ownership form (if the UST facility was sold).

ITEM 197. Amend subrule 135.15(2), introductory paragraph, as follows:

135.15(2) *Permanent closure and changes-in-service.* Permanent closure of an underground storage tank system must be conducted by an Iowa licensed tank remover. Closure sampling must be conducted by or under the supervision of an Iowa certified groundwater professional.

ITEM 198. Amend paragraph **135.15(2)“b”** as follows:

b. To permanently close a tank or piping, owners and operators must empty and clean them by removing all liquids and accumulated sludge. All tanks taken out of service permanently must also be ~~either~~ removed from the ground, ~~or~~ filled with an inert solid material, or closed in place by a method approved by the department. Piping must either be removed from the ground or have the ends plugged with an inert solid material.

ITEM 199. Amend paragraph **135.15(2)“d”** as follows:

d. Permanent closure procedures must be followed in the replacement of tanks or piping. Notification must be made using DNR Form 542-1308, "Notification of Tank Closure or Change-in-Service." The form must include the date scheduled for the closure. Oral confirmation of the closure date must be given to the DNR field office 24 hours prior to the actual closure. The required assessment of the excavation zone under ~~139.15(3)~~135.15(3) must be performed after notifying the department but before completion of the permanent closure or change-in-service.

ITEM 200. Rescind subrule 135.15(2) "Note" and adopt the following **new** "Note" in lieu thereof:

NOTE: The following cleaning and closure procedures may be used to comply with subrule 135.15(2):

- American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";
- American Petroleum Institute Standard 2015, ""Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";
- American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";
- American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," may be used as guidance for compliance with this section;
- National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and
- National Institute for Occupational Safety and Health Publication 80-106, "Criteria for a Recommended Standard...Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

ITEM 201. Amend paragraph **135.15(3)"a"** as follows:

135.15(3) *Assessing the site at closure or change-in-service.*

a. Before permanent closure or a change-in-service is completed, owners or operators must measure

for the presence of a release where contamination is most likely to be present at the UST site. This soil and groundwater closure investigation must be conducted or supervised by a groundwater professional certified under 567—Chapter 134, Part A, unless the department in its discretion grants an exemption and provides direct supervision of the closure investigation. In selecting the sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release.

At UST sites with a history of petroleum storage, soil and groundwater samples shall in every case be analyzed for benzene, toluene, ethylbenzene, and xylenes (BTEX) with each compound reported separately in accordance with 567—135.16(455B). If there has been a history or suspected history of petroleum storage other than gasoline or gasoline blends (i.e., all grades of diesel fuels, fuel oil, kerosene, oil and mineral spirits), or such storage history is unknown or uncertain, soil and groundwater samples shall also be analyzed for total extractable hydrocarbons in accordance with 567—135.16(455B).

All such samples shall be collected separately and shipped to a laboratory certified under ~~567—Chapter 42, Part C~~ 567—Chapter 83, within 72 hours of collection. Samples shall be refrigerated and protected from freezing during shipment to the laboratory.

When ~~a~~an UST is removed from an area of confirmed contamination, the department may waive closure sampling if written documentation is submitted with the closure notification. Documentation should include laboratory analytical reports and a site map showing tank and piping locations along with contamination plume and sampling locations.

ITEM 202. Amend paragraph **135.15(3)"b,"** introductory paragraph, as follows:

b. For all permanent tank and piping closures or changes-in-service, at least one water sample must be taken from the first saturated groundwater zone via a developed monitoring well ~~or borehole~~ except as provided in paragraph *"g."* The well ~~or borehole~~ must be located downgradient from and as close as possible to the ~~excavation~~ UST system but no farther away than 20 feet from system components. At some tank and piping

closures a minimum of one monitoring well may not be sufficient to represent a release where it most likely to be present. An additional groundwater monitoring well or wells may be necessary.

ITEM 203. Amend paragraph **135.15(3)"c"** as follows:

c. For permanent closure by tank removal, the departmental guidance document entitled "Underground Storage Tank Closure Procedures for Tank and Piping Removal" must be followed. The minimum number of soil samples that must be taken depends on the tank size and length of product piping. Samples must be taken at a depth of 1 to 2 feet beneath the tank fill area below the base of the tank along the tank's centerline. Soil samples must also be taken at least every 10 feet along the product piping at a depth of 1 to 2 feet beneath the piping fill area below the piping~~.~~, unless alternate sampling is approved by the department.

If sands or other highly permeable soils are encountered, alternative sampling methods may be required.

If contamination is suspected or found in any area within the excavation (i.e., sidewall or bottom), a soil sample must be taken at that location.

The numbers of samples required for tanks are as follows:

Nominal Tank Capacity (gallons)	Number of Samples	Location on Centerline
1,000 or less	1	center of tank
1,001 - 8,000	2	1/3 from ends
8,001 - 30,000	3	5 feet from ends and at center of tank
30,001 - 40,000	4	5 and 15 feet from ends
40,001 and more	5	5 and 15 feet from ends and at center of tank

ITEM 204. Amend paragraph **135.15(3)"d"** as follows:

d. For closing a tank in place by filling with an inert solid material or for a change-in-service, the departmental guidance document entitled "Underground Storage Tank Closure for Filling in Place" must be followed. The minimum number of soil borings required for sampling depends on the size of the tank and the

length of the product piping. Soil samples must be taken within 5 feet of the sides and ends of the tank at a depth of 2 to 4 feet below the base of the tank, but outside the backfill material, at equal intervals around the tank. Soil samples must also be taken at least every 10 feet along the product piping at a depth of 1 to 2 feet beneath the piping fill area below the piping~~.~~, unless alternate sampling is approved by the department. If sands or other highly permeable soils are encountered, alternative sampling methods may be required.

The minimum numbers of soil borings and samples required are as follows:

Nominal Tank Capacity (gallons)	Number of Samples	Location of Samples
6,000 or less	4	1 each end and each side
6,001 - 12,000	6	1 each end and 2 each side
12,001 or more	8	1 each end and 3 each side

ITEM 205. Amend paragraph **135.15(3)"e"** as follows:

e. A closure report in a format prescribed by the department must be submitted to the department within 45 days of the tank removal or sampling for a closure in place. ~~The report must include all laboratory analytical reports, soil boring and well or borehole construction details and stratigraphic logs, and a dimensional drawing showing location and depth of all tanks, piping, sampling, and wells or boreholes, and contaminated soil encountered.~~ Refer to the Underground Storage Tank Closure Guidance for reporting format. The tank tags must be returned with the closure report.

ITEM 206. Amend subrule 135.15(4) as follows:

135.15(4) ~~*Overexcavation*~~ *Over-excavation of contaminated soils at closure*

a. If contaminated soils are discovered while assessing a site at closure in accordance with 135.15(3), owners and operators may ~~overexcavate~~ over-excavate up to one foot of the contaminated soils surrounding the tank pit. The contamination and ~~overexcavation~~ over-excavation must be reported to the department in accordance with the requirements of 135.6(4)*"a"* prior to backfilling the excavation. If excavation is limited to one foot of

contaminated soils, a soil sample shall be taken and laboratory analyzed in accordance with 567—135.16(455B) from the area showing the greatest contamination. Any ~~overexcavation~~ over-excavation of contaminated soils beyond one foot of contaminated soils is considered expedited corrective action and must be conducted by a certified groundwater professional in accordance with the procedures in 135.12(11).

b. Excavated contaminated soils must be properly disposed in accordance with 567—Chapters 100, 101, 102, 120, and 121, Iowa Administrative Code.

c. A report must be submitted to the department within 30 days of completion of the laboratory analysis. The report must include the requirements of 135.15(3)*"e"* and a dimensional drawing showing the depth and area of the excavation prior to and after ~~overexcavation~~ over-excavation. The area of contamination must be shown.

ITEM 207. Amend subrule 135.15(7) as follows:

135.15(7) *Applicability to pre-1974 USTs.* The closure provisions of rule 567—135.15(455B) are not applicable to USTs which have been out of operation ~~as of~~ prior to January 1, 1974. For purposes of this subrule, out of operation means that no regulated substance has been deposited into or dispensed from the tanks and that the tanks do not currently contain an accumulation of regulated substances other than a de minimus amount as provided in 135.15(1)*"a."*

Owners and operators or other interested parties are not required to submit documentation that USTs meet the exemption conditions and may rely on this subrule as guidance. However, should a question arise as to whether USTs meet the exemption, or owners and operators or other interested parties request acknowledgment by the department that USTs are exempt, they must submit an affidavit on a form provided by the department. The affiant must certify that based on a reasonable investigation and to the best of the affiant's knowledge, the USTs were taken out of operation prior to January 1, 1974, the USTs have not contained a regulated substance since January 1, 1974, and the USTs do not currently contain an accumulation of regulated substances.

If the department has a reasonable basis to suspect a release has occurred, the release investigation and confirmation steps of ~~subrule 135.8(1)~~ rule 135.6(455B) and the corrective action requirements as provided in

567—135.7(455B) through ~~to 567—135.8~~ 567—135.12(455B) shall apply.

ITEM 208. Amend subrule 135.16(1) as follows:

135.16(1) *General.* When ~~having soil or water analyzed~~ analyzing for petroleum or hazardous substances, owners and operators of UST systems must use a laboratory certified under 567—Chapter 83. In addition they must ensure that all ~~soil and groundwater~~ samples are properly preserved and shipped within 72 hours of collection to a laboratory certified under 567—Chapter 83~~, for UST petroleum analyses~~. This rule provides acceptable analytical procedures for petroleum substances and required information that must be provided in all laboratory reports.

ITEM 209. Amend subrule 135.16(3) as follows:

135.16(3) Analysis of soil and water for high volatile petroleum compounds (i.e., gasoline, benzene, ethylbenzene, toluene, xylene). Sample preparation and analysis shall be by Method OA-1, "Method for Determination of Volatile Petroleum Hydrocarbons (gasoline)," revision ~~7/27/93, University Hygienic Laboratory, Iowa City, Iowa. This method is based on U.S. EPA methods 5030, 8000, and 8015, SW-846, "Test Methods for Evaluating Solid Waste," 3rd Edition. Copies of Method OA-1 are available from the department.~~ 12/01/2019, State Hygienic Laboratory at the University of Iowa, or EPA Method 8260D, "Test Methods for Evaluating Solid Waste", 3rd Edition - Update 6, July 2018. Copies of method OA-1 are available from the department.

ITEM 210. Amend subrule 135.16(4) as follows:

135.16(4) *Analysis of soil and water for low volatile petroleum hydrocarbon contamination (i.e., all grades of diesel fuel, fuel oil, kerosene, oil, and mineral spirits).* Sample preparation and analysis shall be by Method OA-2, "Determination of Extractable Petroleum Products (and Related Low Volatility Organic Compounds)," revision ~~7/27/93, University Hygienic Laboratory, Iowa City, Iowa.~~ 12/01/2019, State Hygienic Laboratory at the University of Iowa. ~~This method is based on U.S. EPA methods 3500, 3510, 3520, 3540, 3550,~~

~~8000, and 8100, SW-846, "Test Methods for Evaluating Solid Waste," 3rd Edition.~~ Copies of Method OA-2 are available from the department.

ITEM 211. Amend subrule 135.16(5) as follows:

135.16(5) *Analysis of soil gas for volatile petroleum hydrocarbons.* Analysis of soil gas for volatile petroleum hydrocarbons shall be conducted in accordance with the National Institute for Occupational Safety and Health (NIOSH) Method 1501, Issue 3, March 15, 2003, or a department-approved equivalent method.

ITEM 212. Adopt the following **new** subrule 135.16(6):

135.16(6) Analytical methods for methyl tertiary-butyl ether (MTBE). Analysis of water for MTBE must be conducted by a laboratory certified under 567—Chapter 83 for petroleum analyses.

a. Sample preparation and analysis shall be by U.S. Environmental Protection Agency Method 8260D, "Test Methods for Evaluating Solid Waste", 3rd Edition - Update 6, July 2018.

b. Laboratories performing the analyses must run standards for MTBE on a routine basis, and standards for other possible compounds like ethyl tertiary-butyl ether (ETBE), tertiary-amyl methyl ether (TAME), di-isopropyl ether (DIPE), and tertiary-butyl alcohol (TBA) to be certain of their identification should they be detected.

c. Laboratories must run a method detection limit study and an initial demonstration of capability for MTBE. These records must be kept on file.

d. The minimum detection level for MTBE in water is 15 ug/L.

ITEM 213. Amend subrule 135.17(2) as follows:

135.17(2) *Individual claims.* The financial ability of individual owners and operators of USTs, with or without an active business (including but not limited to sole proprietorships and general partnerships), ~~shall~~ may be evaluated using the most current version of "INDIPAY" developed by the U.S. Environmental Protection Agency ~~"Individual Ability to Pay Guidance" document dated June 19, 1992,~~ and generally accepted principles

of financial analysis. This guidance is only one tool the department may use in evaluating claims of financial inability.

ITEM 214. Amend subrule 135.17(3) as follows:

135.17(3) *Corporate claims.* The financial ability of corporate owners and operators of USTs ~~shall~~ may be evaluated using the ~~June 1992~~ most current version of "ABEL" developed by the U.S. Environmental Protection Agency and generally accepted principles of financial analysis. This guidance is only one tool the department may use in evaluating claims of financial inability.

ITEM 215. Rescind subrules **135.18(1) to (4)**. Renumber the remaining subrules.

ITEM 216. Amend rule 567—135.19(455B) as follows:

567—135.19(455B) Analyzing for methyl tertiary-butyl ether (MTBE~~) in soil and groundwater samples~~.

135.19(1) *General.* The objective of analyzing for MTBE is to determine its presence in ~~soil and~~ water samples collected as part of investigation and remediation of contamination ~~at~~ for underground storage tank facilities.

135.19(2) *Required MTBE testing.* ~~Soil and water~~Water samples must be analyzed for MTBE when collected for risk-based corrective action as required in rules 567—135.8(455B) through 567—135.12(455B). These sampling requirements include but are not limited to~~:~~ Tier 2 and Tier 3 assessments where groundwater ingestion pathway evaluation and subsequent monitoring is required.

~~a. Risk-based corrective action (RBCA) evaluations required for Tier 1, Tier 2, and Tier 3 assessments and corrective action design reports.~~

~~b. Site monitoring.~~

~~c. Site remediation monitoring.~~

135.19(3) MTBE testing not required. Analysis for MTBE is not required for the following: ~~Soil and water~~

~~samples for the following actions are not required to be analyzed for MTBE~~:

a. Closure sampling under rule 567—135.15(455B)~~ unless Tier 1 or Tier 2 sampling is being performed~~.

b. Site checks under subrule 135.6(3)~~135.7(3) unless Tier 1 or Tier 2 sampling is being performed~~.

c. If prior analysis ~~at a site~~ under 135.19(2) has not shown MTBE present~~ in soil or groundwater.~~

d. If the department determines MTBE analysis is no longer needed at a site.

135.19(4) *Reporting.* The analytical data must be submitted in a format prescribed by the department.

ITEM 217. Rescind subrule 135.19(5).

ITEM 218. Amend subrule 135.20(1) as follows:

135.20(1) The owner or operator must have the UST system inspected and an inspection report submitted to the department by ~~a~~an UST compliance inspector certified by the department under 567—Chapter 134~~.~~, Part B. An initial compliance site inspection shall be conducted ~~no later than December 31, 2007between~~ within two years after new tank installation. All subsequent compliance site inspections conducted after the initial compliance site inspection ~~for the 2008-2009 biennial period~~ shall be conducted within 24 months of the prior compliance site inspection. Compliance site inspections must be separated by at least six months.

ITEM 219. Adopt the following **new** rule 567—135.21(455B):

567-135.21(455B) UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

135.21(1) General requirements.

a. Implementation of requirements. Owners and operators must comply with the requirements of this part for UST systems with field-constructed tanks and airport hydrant systems as follows:

(1) For UST systems installed on or before [**effective date of rule**], the requirements are effective according to the following schedule:

Requirement	Effective Date
Upgrading UST systems; general operating requirements; and operator training	October 13, 2021
Release detection	October 13, 2021
Release reporting, response, and investigation; closure; financial responsibility and notification (except as provided in paragraph (b) of this section)	[**effective date of rule**]

(2) For UST systems installed after [**effective date of rule**] the requirements apply at installation.

b. All owners of previously deferred UST systems must submit a registration form provided by the department. Owners and operators of UST systems must demonstrate financial responsibility at the time of submission of the registration form.

c. Except as provided in 567-135.21(2), owners and operators must comply with the requirements of 567-135.1 through 135.20 and 567—Chapter 136(455B).

d. In addition to the codes of practice listed in 135.3(1), owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, *Petroleum Fuel Facilities*, when designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks.

135.21(2) Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

a. *Exception to piping secondary containment requirements*. Owners and operators may use single walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems. Piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons not part of an airport hydrant system must meet the secondary containment requirement when installed or replaced.

b. *Upgrade requirements*. Not later than October 13, 2021, airport hydrant systems and UST systems with field-constructed tanks where installation commenced on or before [**effective date of rule**] must meet the following requirements or be permanently closed pursuant to 567—135.15(455B).

(1) *Corrosion protection*. UST system components in contact with the ground that routinely contain

regulated substances must meet one of the following:

1. Except as provided in paragraph "*a*" of this section, the new UST system performance standards for tanks in 135.3(1)"a" and for piping in 135.3(1)"b"; or

2. Be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory, and meet the requirements of 135.3(1)"a"(2)(3) and (4) for tanks, and 135.3(1)"a"(2), (3) and (4) for piping. Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the department to adequately assess the tank for structural soundness and corrosion holes.

Note to paragraph "*b*": The following codes of practice may be used to comply with this paragraph:

- NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";
- NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";
- National Leak Prevention Association Standard 631, Chapter C, "Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection"; or
- American Society for Testing and Materials Standard G158, "Standard Guide for Three Methods of Assessing Buried Steel Tanks".

(2) *Spill and overfill prevention equipment*. To prevent spilling and overfilling associated with product transfer to the UST system, all UST systems with field-constructed tanks and airport hydrant systems must comply with new UST system spill and overfill prevention equipment requirements specified in 135.3(1)"*c*".

c. *Walkthrough inspections*. In addition to the walkthrough inspection requirements in 135.4(13), owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection according to 135.4(13)"e".

(1) Hydrant pits – visually check for any damage; remove any liquid or debris; and check for any leaks, and

(2) Hydrant piping vaults – check for any hydrant piping leaks.

d. Release detection. Owners and operators of UST systems with field-constructed tanks and airport hydrant systems must begin meeting the release detection requirements described in this subpart not later than October 13, 2021.

(1) Methods of release detection for field-constructed tanks. Owners and operators of field-constructed tanks with a capacity less than or equal to 50,000 gallons must meet the release detection requirements in 567-135.5(455B)

(2) Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons must meet either the requirements in 567-135.5(455B) (except 135.5(4)"e" and "f" must be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

1. Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

2. Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;

3. Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;

4. Perform vapor monitoring (conducted in accordance with 135.5(4)"e" for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

5. Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

• Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

- Perform vapor monitoring or groundwater monitoring (conducted in accordance with 135.5(4)"e" or "f", respectively, for the stored regulated substance) at least every 30 days; or

6. Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraph 135.21(2)"d"(2). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection.

(3) Methods of release detection for piping. Owners and operators of underground piping associated with field-constructed tanks less than or equal to 50,000 gallons must meet the release detection requirements in 567-135.5(455B). Owners and operators of underground piping associated with airport hydrant systems and field-constructed tanks greater than 50,000 gallons must follow either the requirements in 567-135.5(455B) (except 135.5(4)"e" and "f" must be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

1. Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

Maximum Leak Detection Rate Per Test Section Volume		
Test Section Volume (Gallons)	**Semiannual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)**	**Annual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)**
< 50,000	1.0	0.5
≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

Piping segment volumes ≥ 100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

Phase In For Piping Segments ≥ 100,000 Gallons In Volume	
First test	Not later than October 13, 2021 (may use up to 6.0 gph leak rate)

Second test	Between October 13, 2021 and October 13, 2024 (may use up to 6.0 gph leak rate)
Third test	Between October 13, 2024 and October 13, 2025 (must use 3.0 gph for leak rate)
Subsequent tests	After October 13, 2025, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above

2. Perform vapor monitoring (conducted in accordance with 135.5(4)"e" for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

3. Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

- Perform a line tightness test (conducted in accordance with paragraph 1 of this section using the leak rates for the semiannual test) at least every two years; or

- Perform vapor monitoring or groundwater monitoring (conducted in accordance with 135.5(4)"e" or "f," respectively, for the stored regulated substance) at least every 30 days; or

4. Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs 1 through 3 of this section. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection.

(4) *Recordkeeping for release detection*. Owners and operators must maintain release detection records according to the recordkeeping requirements in 135.5(6).

e. Applicability of closure requirements to previously closed UST systems. When directed by the department, the owner and operator of an UST system with field-constructed tanks or airport hydrant system permanently closed before [**effective date of rule**] must assess the excavation zone and close the UST system in accordance with 567-135.15(455B) if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

ITEM 220. Strike "Rural Electrification Administration" wherever it appears in **567—Chapter 136** and insert "Rural Utilities Service" in lieu thereof.

ITEM 221. Amend subrule 136.1(4) as follows:

136.1(4) The requirements of this chapter do not apply to owners and operators of farm or residential tanks of 1,100 gallons or less capacity installed prior to July 1, 1987 or any UST system described in 567—paragraph 135.1(3)"b", ~~or "c" 135.1(3)~~"c"(1), "c"(3) or "c"(4).

ITEM 222. Amend rule **567—136.3(455B)**, definition of "Accidental release," as follows:

"Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

ITEM 223. Rescind the definition(s) of "*Petroleum marketing firms*" in rule **567—136.3(455B)**.

ITEM 224. Amend subrule 136.6(4), first paragraph of the "Letter from Chief Financial Officer," as follows:

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" ~~and/~~or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

ITEM 225. Amend subrule 136.6(4)**,** third paragraph of the "Letter from Chief Financial Officer," as follows:

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under ~~50~~40 CFR Parts 271 and 145:

ITEM 226. Amend subparagraph **136.8(2)"a"(2)(2)** as follows:

2. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in rules 567—136.6(455B) to ~~136.11~~ 136.17(455B).

ITEM 227. Amend subrule 136.9(2), third un-numbered paragraph and fifth un-numbered paragraph, as follows:

Whereas said Principal is required under Subtitle I of the ~~Resource Conservation and Recovery Act (RCRA),~~ Solid Waste Disposal Act, as amended, to provide financial assurance for [insert: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with rule 567—135.7(455B) and the Director of the Iowa Department of Natural Resources instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or ~~"sudden and nonsudden"]~~ "accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternate

financial assurance, as specified in 567—Chapter 136, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

ITEM 228. Amend subrule 136.9(4) as follows:

136.9(4) The owner or operator who uses a surety bond to satisfy the requirements of rule 136.4(455B) must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under rule ~~136.23~~136.21(455B). This standby trust fund must meet the requirements specified in rule ~~136.18~~136.12(455B).

ITEM 229. Amend subrule 136.10(2), paragraph (2) in the "Irrevocable Letter of Credit" as follows:

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the ~~Resource Conservation and Recovery Act of 1976~~ Solid Waste Disposal Act, as amended."

ITEM 230. Amend subrule 136.13(4), first paragraph of the "Letter from Chief Financial Officer", as follows:

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" ~~and/~~or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

ITEM 231. Amend subrule 136.13(5), first paragraph of the "Letter from Chief Financial Officer", as follows:

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" ~~and/~~or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

ITEM 232. Adopt the following **new** subrule 136.13(8):

136.13(8) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the bond rating test or within 30 days of notification by the director of the department that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within 10 days.

ITEM 233. Amend subrule **136.14(5),** the first paragraph of the "Letter from Chief Financial Officer," as follows:

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" ~~and/~~or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

ITEM 234. Amend subrule 136.16(4), first and third unnumbered paragraphs of the "Letter of Chief Financial Officer" as follows:

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" ~~and/~~or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under 567—136.4(455B) of the Iowa Administrative Code (IAC), or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage," or "The local government fund is funded for ~~ten~~ five times the full amount of coverage required under 567—136.4(455B) IAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully funded and I have attached a letter signed by the state attorney general stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) prior voter approval is not necessary before use of the bonding authority".]

ITEM 235. Amend rule **567—136.22(455B)** as follows:

567—136.22(455B) Release from the requirements. An owner or operator is no longer required to

maintain financial responsibility under this chapter for an underground storage tank after the tank has been ~~properly~~ permanently closed or undergoes a change-in-service or, if corrective action is required, after corrective action has been completed and the tank has been ~~properly~~permanently closed or undergoes a change-in-service as required by rule 567—135.15(455B).

_____

Date

_____

Kayla Lyon, Director

IOWA DEPARTMENT OF NATURAL RESOURCES

Petition by the Iowa Grocery Industry Association for a Declaratory Order on Iowa Code Chapter 455C.6(3)	**PETITION FOR DECLARATORY ORDER**

The Iowa Grocery Industry Association (hereinafter "IGIA") petitions for a Declaratory Order pursuant to Iowa Administrative Code section 567-5.1 and Iowa Code section 17A.9 requesting an order on the applicability of the current "convenient service" standard in Iowa Code section 455C.6(3) and Iowa Administrative Code section 567-107.4(1)(c).

RELEVANT FACTS

Iowa's Beverage Containers Control law, Iowa Code chapter 455C, commonly referred to as the "Iowa Bottle Bill," requires consumers to provide an upfront five-cent deposit with each redeemable container with the legal requirement for that deposit to be returned to the consumer when the container is redeemed by a dealer or redemption center. The law allows dealers to decline to redeem containers at their businesses when an approved redemption center provides "a convenient service to consumers for the return of empty beverage containers."[1] The purpose of redemption centers is to "facilitate the return of empty beverage containers *and to serve dealers of beverages*.[2] Iowa Code section 455C.6(3) vests the approval of such redemption centers in the Department.

Iowa Code section 455.9 requires that the Environmental Protection Commission of the Department (the "Commission) shall adopt rules necessary to carry out the provisions of the

[1] IOWA CODE § 455C.6; IOWA ADMIN. CODE r. 567-107.4(1)(c).
[2] IOWA CODE § 455.6(1) (emphasis added).

chapter. In Iowa Admin Code section 567-107.4, the Department provides that "[a] redemption center shall be approved as a redemption center for a dealer if the department determines that the redemption center will provide a convenient service to the dealer's customers," requiring that not only must a redemption center be convenient to consumers, but that it must be convenient to consumers of that dealer's customers. The Department currently administers this rule pursuant to a 10-minute travel standard between the dealer and a proposed redemption center.[3] This travel standard is purportedly determined through a web-based search engine tool with no additional considerations. The Department has advised that their administration of the "convenience standard" has "evolved" from a single mile to their current 10-minute travel standard.[4] The Department does not utilize any additional considerations outlined in making this determination. Moreover, there is no additional statutory or regulatory authority for this standard.[5]

The administration of redemption centers in this manner has resulted in unwarranted refusals to approve otherwise viable redemption centers for IGIA members. For example, in 2019, Fareway Stores, Inc. sought approval for a grocery store in Hiawatha, Iowa to be an approved dealer for a redemption center located 6.4 miles from the store. The request for approval was denied by the Department because, according to the Department's review of online map services, the drive time from the store to the redemption center was between 13 and 16 minutes each way.[6]

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[3] IOWA DEP'T NAT. RES., DETERMINING YOUR REDEMPTION CENTER CATEGORY, *available at* https://www.iowadnr.gov/portals/idnr/uploads/waste/bbregisterforbus.pdf?amp;tabid=838 (last visited July 13, 2020).

[4] E-mail from Bill Blum, Iowa DNR Program Planner, to Garrett Piklapp, Fareway Stores Inc. General Counsel, (Nov. 29, 2018) (on file with IGIA counsel).

[5] E-mail from Bill Blum, Iowa DNR Program Planner, to Dustin Miller, IGIA counsel, (July 26, 2019) (on file with IGIA counsel).

[6] The IGIA seeks a declaratory ruling on the specific question of the Department's definition of the convenience standard as applied to all applications for redemption centers, not just the example provided. *See City of Des Moines v. Public Employment Relations Bd.*, 275 N.W.2d 753 (Iowa 1979) (finding declaratory rulings can apply to purely hypothetical sets of facts and do not need to present live, present controversies).

At various times, the IGIA and its members have sought clarity on the Department's position with regards to the development of its convenience standard. In an email to the General Counsel for Fareway Stores, Inc., a Department employee stated that a convenience standard is "qualitatively different" than the actual purchase of the product to be redeemed and that the convenience standard applied by the Department has evolved over time.[7] The Department employee provided that Department reviews each application "on its own individual merits in regards to consumer convenience," without further detail on criteria used.[8]

The Department has stated that "[t]he bottle bill is set in law, so we can't contradict the law."[9] The law, however, simply requires redemption centers to be convenient to customers. The Department has interpreted the law in its rules to require that the "redemption center will provide a convenient service *to the dealer's customers*." The Department, however, has failed to formally define what constitutes a convenient service to the dealer's customers. Current administration has arbitrarily applied the 10-minute travel standard that is not set by statute or rule. The Department admitted publicly and to IGIA that the standard is not rule-based, but rather that "[t]he system is essentially based on people at the local level dealing with each other in good faith."[10]

The IGIA sent a letter to Department staff on September 3, 2019, questioning the current legality of the convenience standard applied by the Department. In a response dated October 4, 2019, legal counsel for the Department affirmed the Department did not have a rule-based

[7] E-mail from Bill Blum, Iowa DNR Program Planner, to Garret Piklapp, Fareway Stores Inc. General Counsel (Nov. 29, 2018) (on file with IGIA counsel).
[8] *Id.*
[9] Lee Rood, *Got a pile of recycling in the garage? All stores expected to take returns again on July 26*, DES MOINES REGISTER (July 4, 2020, 7:00 AM), https://www.desmoinesregister.com/story/news/2020/07/04/iowa-recycling-deposit-retailers-expected-take-empty-cans-bottles-july-26/5365234002 (last updated July 6, 2020, 1:51 PM).
[10] Alex Schuman, Iowans short-changed when redeeming cans, KCCI Des Moines (Apr. 10, 2019, 6:19 PM), https://www.kcci.com/article/iowans-short-changed-when-redeeming-cans/27105416; E-mail from Bill Blum, Iowa DNR Program Planner, to Dustin Miller, IGIA counsel (July 26, 2019) (on file with IGIA counsel).

standard.[11] Counsel further stated that it must apply the term in a "reasonable manner." The letter goes on to point out that the Department has not included this change in their regulatory agenda, but if it pursues rulemaking on the issue, the Department would need significant input from the public.[12]

Section 455C.9 of the Iowa Code provides that "[t]he commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this chapter, subject to the provisions of chapter 17A." In March 2020, the IGIA filed a Petition for Rulemaking requesting that the Department undertake the rulemaking process pursuant to chapter 17A of the Iowa Code in order to address the amorphous "convenience standard" as administered by the Department. In its Petition, the IGIA requested that the convenience standard be defined as a 15-mile radius from a dealer based on data related to modern travel times of consumers to various activities, commutes to work, and acquisition of the beverages themselves. Despite this petition and the absence of any rulemaking to define the "convenience standard," the Department advised it would deny the Petition for Rulemaking and rely on the Iowa Legislature to amend Iowa Code chapter 455C. A convenience standard applied without formal rules based solely upon Department-determined vehicle travel times from the dealer to the redemption center is arbitrary, vague, and undefined, and fails to provide certainty to dealers and redemption centers seeking to comply with the statute.

APPLICABLE LAW

1. Iowa Code chapter 455C implements Iowa's Beverage Containers Control law, which requires dealers to charge a five-cent deposit to a consumer who purchases certain

[11] Letter from David Scott, Iowa DNR counsel, to Brad Epperly and Dustin Miller, IGIA counsel (Oct. 04, 2019) (on file with IGIA counsel).
[12] *Id.*

beverages and then mandates that a dealer accept all empty beverage containers of the type that was sold to consumers.

2. Under Iowa Code section 455C.4, a dealer may refuse to accept and pay the refund value for empty beverage containers if the dealer is included in an order of the Department approving a redemption center under section 455C.6.

3. Iowa Code section 455C.6 authorizes the Department to approve redemption centers to assist dealers in the return of empty containers, enabling dealers to decline the return of containers to their stores pursuant to Iowa Code section 455C.4. The statute provides that the Department shall approve a redemption center if "the redemption center will provide a convenient service to consumers." The statute does not define "convenient service to consumers."

4. Under Iowa Code chapter 17A[13] and section 455C.9, the Department is required to adopt rules for administration of the Beverage Containers Control law at Iowa Administrative Code chapter 567-107.

5. The Department adopted a rule interpreting the statute stating "[a] redemption center shall be approved as a redemption center for a dealer if the department determines that the redemption center will provide a convenient service to the dealer's customers." Iowa Admin. Code 467-107.4(1)(c). The rule does not define a "convenient service to the dealer's customers."

6. Iowa Code section 17A.1(2) "provide[s] a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public." A determination of the standard for what makes a redemption center a "convenient

[13] Iowa Code § 17A.3(1)(c), (d) ("[E]ach agency shall . . . adopt rules, in addition to those otherwise required by this chapter, embodying appropriate standards, principles, and procedural safeguards that the agency will apply to the law it administers . . . [and] [m]ake available for public inspection all rules.").

service to customers" is necessary for the public to understand and comply with the bottle bill, and the procedure for formal rule-making must be followed in making this determination.

QUESTION TO BE ANSWERED

Can the Department approve or deny applications for redemption centers to assist dealers in the return of redeemable empty beverage containers under Iowa Code section 455C.6 based on an undefined 10-minute travel standard without a statutory or regulatory definition of "convenience to the consumer"?

DESIRED ANSWERS AND REASONS FOR SUPPORT

The Department is required to follow the procedural rule-making requirements of Iowa Code chapter 17A to take actions affecting the rights of the public. The Department must following this rule-making process to implement the bottle bill under Iowa Code section 455C.9. The Department has failed to adopt rules defining the "convenient service" standard applicable to redemption centers. The 10-minute travel standard applied by the Department is invalid as it was not created through formal rule-making procedure of Iowa Code chapter 17A. The Department must suspend all actions related to approvals under Iowa Code section 455C.6(3) based on the Department's current application of the "convenient service" standard.

REASONS FOR DECLARATORY ORDER AND INTEREST IN OUTCOME

After over four decades of administration of chapter 455C by the Department, the rights of IGIA members have been increasingly disregarded. The legislature enacted chapter 455C with broad guidelines and directed the Department to enact rules necessary to carry out the chapter. Instead, the Department has administered the program arbitrarily without formal rules, depriving IGIA members the benefit of redemption centers to assist in the return of redeemable beverage containers. The IGIA objects to the administration of the Department's current

convenience standard and contests its legality without conducting a rulemaking process directed by the legislature and required by Chapter 17A. IGIA, on behalf of its members, seeks a declaratory order enabling redemption centers to be approved based upon a defined standard.

STATEMENT ON OTHER PROCEEDINGS

The IGIA is not a party to any other proceeding involving the question at issue and we do not have knowledge of these questions being decided by the Department or any governmental entity.

DESCRIPTION OF ANY CLASS OF AFFECTED PERSONS

- All Approved Redemption Centers according to Iowa Code Section 455C.6.
- All Unapproved Redemption Centers according to Iowa Code Section 455C.7.
- All Dealers according to Iowa Code Section 455C.1(5).
- All Distributors according to Iowa Code Section 455C.1(9).
- All Dealer Agents according to Iowa Code Section 455C.1(6).
- All Manufacturers according to Iowa Code Section 455C.1(11).

PETITIONERS' ARGUMENTS

The Iowa Administrative Procedures Act[14] governs the conduct of agencies in the administration of laws enacted by the legislature. Among the various purposes of the Act are to:

- Provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public.
- Increase public accountability of administrative agencies; and
- Simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions.[15]

[14] *See generally* IOWA CODE ch. 17A.
[15] Iowa Code §§ 17A.1, 17A.2

The convenience standard administered by the Department has not followed this procedure and the Department has made changes over time that has major impacts to our members without any public scrutiny. The minimum procedure outlined in Iowa Code chapter 17A does not dictate the rules put in place by an agency but ensures that those rules have received input from stakeholders.[16] Professor Arthur E. Bonfield, the architect of Iowa's Administrative Procedures Act, wrote "agencies must make a real and substantial effort to provide, by rule, procedural protections that are adequate, under the particular circumstances, to protect persons affected by agency action against improper exercises of agency power."[17] A convenience standard controlled only by agency staff, without input from the public, but has a major impact on the operations of commercial enterprises across the state would seem to fit within the protection contemplated by Professor Bonfield and the Iowa Legislature in the development of the Iowa Administrative Procedures Act.

In correspondence with the IGIA, the Department admitted that the 10-minute travel standard applied by the agency is not outlined in Iowa Code section 455C.6(3) and is not based upon any rule-based procedure pursuant to Iowa Code chapter 17A. The Department stated that without this legal authority the agency must simply "apply the term in a reasonable manner."[18]

IGIA members are "persons" as defined in chapter 17A, entitled to the protections of the Act. As stated in Iowa Code section 455C.6(1), redemption centers are not only created to facilitate the return of empty containers, but also to "serve dealers." The Department's arbitrary administration of redemption center approval has deprived IGIA members of their rights under

[16] IOWA LEGISLATIVE SERVS. AGENCY, LEGISLATIVE GUIDE, LEGAL SERVICES DIVISION: RULEMAKING GUIDE 2–3 (2015), *available at* https://www.legis.iowa.gov/docs/publications/LG/14966.pdf.
[17] ARTHUR E. BONFIELD, AMENDMENTS TO IOWA ADMINISTRATIVE PROCEDURE ACT: REPORT ON SELECTED PROVISIONS TO THE IOWA STATE BAR ASSOCIATION AND IOWA STATE GOVERNMENT 15–22 (1998).
[18] Letter from David Scott, DNR counsel, to Brad Epperly and Dustin Miller, IGIA counsel (Oct. 04, 2019) (on file with IGIA counsel).

chapter 455C without following required procedure. In the absence of any rulemaking process defining the statutory language "convenience to the consumer," the Department's denial of proposed redemption centers to "serve dealers" is void ab initio.

Moreover, even without any rulemaking process or internal guidance, the Department admits in correspondence that its administration has changed over time. This is no doubt due to the changing patterns of behavior in society. In today's society, our citizens commute further distances to work, school and to shop. According to the most recent statistics from the U.S. Census Bureau, the average commute to work in Iowa is 19.1 minutes.[19] Where once schools were in neighborhoods where children walked, now they are may ride a bus for up to an hour. The shrinking rural population in Iowa has resulted in fewer grocery stores and longer distances to travel for Iowans to purchase their groceries.[20] And even though the distances in metro areas may not be as far to a grocery store, a common commute can still reach 15 to 20 minutes.

The Department cannot define what constitutes a "convenient service to customers" without undertaking a formal rulemaking process to receive public input and establish a standard reflective of today's society. The Department must administer the approval of redemption centers under chapter 455C not only to reflect the "convenience of the consumer," but to promote these redemption centers to help "facilitate the return of empty beverage containers"

[19] U.S. CENSUS BUREAU, https://www.census.gov/en.html (search for "average commute time census" in search bar, click "by state" under the top result, and click either "chart" or "table" and see "Iowa").
[20] *See, e.g.*, Madison Arnold, *Solving food deserts in Iowa: When small towns lose grocery stores, where do residents turn?*, GAZETTE (May 3, 2019, 8:00 AM), https://www.thegazette.com/IowaIdeas/stories/human-social-services/solving-food-deserts-in-iowa-when-small-towns-lose-grocery-stores-where-do-residents-turn-20190503 ("Lone Tree Mayor Jon Green notes most of the Johnson County city's residents have vehicles and travel . . . to get groceries[,] [b]ut there is concern for residents, such as senior citizens, who may be less mobile or living on a fixed income."); JON M. BAILEY, CTR. FOR RURAL AFFS., RURAL GROCERY STORES: IMPORTANCE AND CHALLENGES (2010), *available at* https://www.ruralgrocery.org/resources/Importance%20and%20Challenges.pdf ("In rural Iowa, 43 percent of grocery stores in towns with populations less than 1,000 have closed.").

and to enable "serve dealers." Approving redemption centers within at least a 15 mile radius is consistent with the statutory language of Chapter 455C.

MEETING WITH DEPARTMENT AND PETITIONER REPRESENTATIVE

Petitioners hereby request a joint meeting between the Director of the Department, legal staff, and IGIA to discuss the agency's response to this petition pursuant to Iowa Administrative Code 11-8.7(17A). Please address all correspondence regarding this petition to counsel for IGIA at the address below.

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ATTORNEYS FOR THE IOWA GROCERY INDUSTRY ASSOCIATION

IOWA DEPARTMENT OF NATURAL RESOURCES
GOVERNOR KIM REYNOLDS
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September 29, 2020

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Counsel:

The Iowa Department of Natural Resources (DNR) received a Petition for a Declaratory Order (Petition) from the Iowa Grocery Industry Association (IGIA) concerning the DNR's authority to approve or deny "redemption centers." Cleaner Iowa, Inc. filed a timely motion to intervene.[1]

The relevant Iowa Code section requires the DNR to approve redemption centers if the redemption center "will provide a convenient service to consumers[.]" IOWA CODE § 455C.6(3). The legislature did not define the term "convenient service" in the statute. In adopting rules to implement the applicable statute, the Environmental Protection Commission (EPC) adopted virtually identical language. The EPC's rule states, in part, that a "redemption center shall be approved as a redemption center for a dealer if the department determines that the redemption center will provide a convenient service to the dealer's customers." 567 IOWA ADMINISTRATIVE CODE (IAC) 107.4(1)"c".[2]

The DNR has determined that a ten-minute one-way trip for the consumer is a reasonable benchmark when assessing whether a redemption center will provide a "convenient service to consumers" who will use the redemption center instead of returning bottles or cans to the dealer's facility. Despite the fact that the legislature did not define the term, the Petitioner argues that DNR's review process for redemption center applications is unlawful because the DNR has not defined this "convenience standard" by rule.

[1] The IGIA objected to Cleaner Iowa's standing to intervene. DNR did not rule on the objection.

[2] If a redemption center has been approved for a dealer, the dealer is no longer required to accept redeemable bottles and cans.

The IGIA requested a meeting with DNR to discuss the Petition. Pursuant to 561 IAC 6.7,[3] DNR held a telephonic meeting on September 2, 2020 with the Petitioner and the Intervenor to discuss the Petition. Each party was given 15 minutes to present their respective position, followed by the opportunity for questions from DNR staff. During the IGIA's presentation it became apparent that, while the Petition raises a question about approval or denial of redemption centers, the primary purpose of the Petition is to require the DNR to initiate rulemaking to define the term "convenient."[4]

DNR is authorized to issue a declaratory order "declaring the applicability of the statute, rule, or order in question to the specified circumstances," to decline to issue an order, or to take no action on the Petition. IOWA CODE §§ 17A.9(5) and (8).[5] In this case, pursuant to section 17A.9 and the applicable rules governing the grounds for refusing to issue a declaratory order located at 561 IAC 6.9, the DNR is declining (refusing) to issue a Declaratory Order for the reasons enumerated below.

1. **The DNR is prohibited by statute and rule from issuing a declaratory order if necessary parties have not participated in the proceeding.**

The DNR "shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding" (emphasis added). IOWA CODE § 17A.9(1)(b)(2). *See also* 561 IAC 6.9(1)(9).

The "convenience standard" was established by the legislature in the interest of "consumers." IOWA CODE § 455C.6(3). As such, every consumer in the state of Iowa would be affected by a declaratory order on this question, but no consumers have provided written consent for an order to be issued and no consumers have intervened or filed similar petitions.[6]

It is the DNR's position that a declaratory order relating to the "convenience standard" cannot be issued because necessary parties have not participated in the proceeding as required by statute.

2. **The issue raised in the Petition is within the jurisdiction of the legislature, so DNR rulemaking would be inappropriate.**

Pursuant to 561 IAC 6.9(1)(5), the issue raised by IGIA would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter. Given the scope of the impact of a change to the standard—namely, every citizen in the state that seeks to redeem bottles and cans—a legislative determination is appropriate.

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[3] The DNR, and its associated commissions, have adopted the Uniform Rules on Agency Procedure for declaratory orders, with necessary amendments.

[4] The purpose of a Petition for Declaratory Order pursuant to IOWA CODE § 17A.9 is not to initiate rulemaking. This appears to the DNR to be the improper use of this mechanism.

[5] DNR notes for the record that it complied with the 30-day requirement enumerated in Iowa Code section 17A.9(5)(b) by issuing a written notice of informal meeting to both the Petitioner and the Intervenor.

[6] Remarkably, the IGIA failed to include "consumers" as a category of parties that would be affected by the Petition.

Further, deferring to legislative initiatives when the legislature has already introduced legislative language on the matter at hand is not a novel concept. For example, in May, 2012, then-Governor Branstad issued Executive Order 77 rescinding a rule enacted by the Natural Resource Commission (NRC) because the legislature had just considered legislation on the issue that was the subject of the rulemaking (banning lead shot during the dove hunting season). As stated in the Executive Order, "the determination of whether hunters should be forced to stop using traditional lead shot is the role of the legislature, not an unelected NRC."

In the last legislative session, at least three bills were introduced that would have established a bright-line standard for when a dealer could refuse to accept cans in reliance on a redemption center in the area. In SSB 1225 and HSB 507, the redemption center would have to be within a ten-mile radius of the dealer. In SSB 3109, the redemption center would have to be within a 15-25-mile radius, expanding over time. These bills make other changes to the underlying Beverage Container Control statute (the "bottle bill") as well, including adding new defined terms.

Even if deference to the legislature on pending matters was not an expectation, given the fact that the legislature is considering significant alterations to the underlying statute—including changes that would specifically address concerns raised in the Petition—it would seem prudent for the DNR to wait on legislative action before taking any unilateral action on its own. As such, DNR must decline to issue a declaratory order given the legislature's clear interest in the matter.

For these reasons, the DNR declines to issue a Declaratory Order on matters related to the "convenience standard."

Sincerely,

Kayla Lyon, Director
Iowa Department of Natural Resources