



IOWA UNDERGROUND STORAGE TANK FUND

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TO: All Interested Parties

FROM: James R. Gastineau, Administrator

RE: Governmental Claims Program

DATE: January 15, 2019

The Iowa Comprehensive Petroleum Underground Storage Tank Fund was created to assist owners and operators of underground storage tanks (USTs) comply with state and federal environmental regulations. The program, administered by a Board, was established in 1989 with the intent to provide a funding measure to assist owners and operators of UST sites and to minimize societal costs and environmental damage from petroleum releases that were either reported to the Iowa Department of Natural Resources (DNR) prior to October 26, 1990, occurred prior to October 26, 1990 or could not have occurred after October 26, 1990.

In addition to providing funding assistance to UST owners and operators, the legislature also enacted provisions to assist governmental entities comply with regulations for acquired tank sites and made a provision to assist certain entities in complying with DNR regulations for petroleum contamination when encountered in a public right-of-way.

The following provisions apply to governmental entities seeking assistance:

(a) Iowa Code 455G.9, Section 1, paragraph *d.* allows the Board is to provide 100% of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a “*responsible party*” for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. In such situations, the board may act as an agent for the county. Actual corrective action on the acquired site is to be overseen by the department, the board, and a certified groundwater professional. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including but not limited to loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution. Reasonable acquisition costs do not include any taxes or costs related to the collection of taxes.

(b) Iowa Code 455G.9, Section 1, paragraph *j.*, allows the Board to provide 100% of the costs of corrective action for a governmental subdivision in connection with a tank if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was acquired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which it acquired, and does not become a responsible party by sale or transfer of property so acquired.

For either of the provisions noted above, the governmental entity is NOT required to show that the release occurred prior to October 26, 1990. These provisions thus allow cities and counties the opportunity to acquire abandoned tank sites, have the sites assessed and effectively addressed as required by the DNR to reduce the risk that may exist from the presence of petroleum contamination at the acquired site, with the ultimate goal of allowing communities to redevelop these abandoned properties so as to return them to use for the local communities.

(c) Iowa Code 455G.9, Section 1, paragraph *h.*... allows the Board to provide 100% of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States Department of Housing and Urban Development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

(d) Iowa Code 455G.9 (10) allows the Board to provide governmental subdivisions and public works utilities reimbursement for reasonable expenses incurred by a governmental subdivision or public works utility for sampling, treating, handling, or disposing, as required by the department, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance, or repair of a utility or public improvement. This provision may be an important factor to governmental entities and public works utilities as they consider future work planned in areas with known or suspected petroleum contamination. If work is planned in such areas or if petroleum contamination suspected to be present during such work, the DNR should be contacted to determine regulatory requirements. Contact should also be made with the Board program office to determine if funding is available to assist you in meeting those same requirements and sampling requirements needed to verify petroleum contamination.

If have any questions concerning this memo or the claims process or wish to make a claim, please contact the office of the UST Fund Administrator at (515) 725-8450.