



# IOWA UNDERGROUND STORAGE TANK FUND

Douglas M. Beech, *Chairperson*

James R. Gastineau, *Administrator*

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N. Kurt Mumm

**TO:** All Interested Parties

**FROM:** James R. Gastineau, Administrator

**RE:** Innocent Landowner Fund Claims Program

**DATE:** January 25, 2019

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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.

Initially, to qualify as an eligible claimant, an UST owner or operator had to report a release to the DNR by October 26, 1990 and to the Board by February 26, 1994. Due to numerous sites that did not qualify or missed the filing deadline, the legislature created a marketability fund and, under this, the innocent landowners fund.

The innocent landowner (ILO) claim program is designed to provide benefits to owners who aside from missing the deadlines would otherwise be eligible for remedial benefits. To complement the original program, the Board adopted rules allowing owners of sites with USTs permanently closed prior to July 1, 1985 or out of use prior to January 1, 1974 to be eligible ('out of use' means no petroleum product was added or removed from the USTs).

### How to make a claim

To file a claim under the innocent landowner fund, a claimant must:

- (a) Prove that the contamination was reported in accordance with DNR regulations
- (b) Show that the UST facility has been assigned an UST and Leaking UST (LUST) number;
- (c) Be able to provide the necessary documentation to qualify under one of the claim types available (refer to the table on reverse side of this page for claim types):

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 or by FAX at (515) 725-8202.

## **Innocent Landowner Fund Claims**

Categories of Innocent Landowner Claims (Iowa Administrative Code 591 – 11.2(8)). In order to be eligible for reimbursement under any claim type now available, the *claimant must prove* either that the release was reported by October 26, 1990, the release occurred prior to October 26, 1990, or that the UST(s) from whence the release occurred were out of use prior to January 1, 1974.

### **Pre-regulation Claims** (i.e., USTs not required to be registered per DNR requirements)

- a. USTs were taken out of use prior to 1/1/1974 or USTs were permanently closed prior to 7/1/1985
- b. USTs must not have been operated on site since the tanks were taken out of use or closed,
- c. Owner cannot have claimed bankruptcy on or after the date of the reported release

### **Late filed Remedial Claims**

- a. Release must have been reported to DNR consistent with applicable requirements
- b. Owner had no knowledge of release prior to property acquisition if after 10/26/1990
- c. Owner cannot have claimed bankruptcy on or after the date of the reported release

### **Acquired Properties**

- a. Release must have been reported to DNR consistent with applicable requirements
- b. Claimant cannot have been an owner or operator of the UST system from whence release occurred,
- c. Acquisition of the property must have been arm's length transaction
- d. Owner cannot have claimed bankruptcy on or after the date of the reported release

### **Documenting Eligibility for an Innocent Landowner Fund Claim**

For all claims, claimant must confirm he/she has not claimed bankruptcy after the date of the reported release.

#### **1. Pre-regulation Claims**

- a. Prove USTs were closed prior to 7/1/1985 (example: provide DNR closure report, historical registrations, media articles from time frame, Fire Department records, etc.)
- b. Prove USTs were out of use before 1/1/1974. For this consideration, out of use means that no regulated substance has been deposited into or dispensed from the tanks since a date prior to 1/1/1974. Definitive affidavits documenting who, when, where and basis for recollection of events may be considered if they are from a disinterested 3<sup>rd</sup> party, not in chain of ownership or related to any in the chain of ownership.
- c. Provide evidence to show USTs have not been operated at the site since the pre-regulation USTs were taken out of use or closed.

#### **2. Late filed Remedial Claims**

- a. Prove USTs were properly temporarily closed per DNR regulation and remained empty for entire time period after 10/26/1990 through closure (example: documentation can be historical UST closure report, invoices for product removal if temporarily closed, Fire Department records, etc.)
- b. If a release was reported prior to 10/26/1990 but no remedial claim was filed, claimant must show compliance with all other DNR requirements for USTs after 10/26/1990 during continued life of tank-including compliance with financial responsibility requirements, no other releases, etc. Payment of a reinstatement fee may be possible, if all other regulations, other than FR, were met.

#### **3. Acquired Properties**

- a. Comply with 2a or 2b, above.
- b. Document property acquisition as an arm's length transaction
- c. Document no ownership or operation of the UST system from where the release occurred.