

28E AGREEMENT
BETWEEN the IOWA COMPREHENSIVE PETROLEUM UNDERGROUND
STORAGE TANK FUND BOARD and the IOWA DEPARTMENT OF NATURAL
RESOURCES for the ADMINISTRATION OF THE IOWA COMPREHENSIVE
PETROLEUM UNDERGROUND STORAGE TANK FUND

This Agreement (Agreement) is entered into by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board), with its Administrator's office currently located at 2700 Westown Parkway, Suite 320, W. Des Moines, Iowa, 50266, and the Iowa Department of Natural Resources (DNR) central office located at 502 E. 9th Street, Des Moines, Iowa, 50319 (collectively referred to as the Parties). This Agreement is entered into pursuant to Iowa Code chapter 28E and Iowa Code section 455G.5.

I. PURPOSE

The Board was established under Iowa Code chapter 455G (hereinafter referred to as "455G") to administer the Iowa Comprehensive Petroleum Underground Storage Tank Fund (hereinafter referred to as the "Fund"). The Iowa Comprehensive Petroleum Underground Storage Tank Fund Program (hereinafter referred to as the "Program") was created and operates pursuant to 455G to assist Iowa's owners and operators of petroleum underground storage tanks (hereinafter referred to as "USTs") in complying with federal environmental protection agency technical and financial responsibility regulations and to perform other functions set forth in 455G.

Iowa Code section 455G.5 authorizes the Board to enter into a contract or an agreement authorized under Iowa Code chapter 28E with the DNR in connection with the Board's implementation and administration of the Board's programs. Pursuant to this authority, the Board and DNR desire to enter into this 28E Agreement for the purpose of establishing the terms under which DNR and Board will jointly administer the Fund. The Parties hereby establish the terms under which the DNR will assist the Board to provide for the implementation, administration, operation, and phase out of the Program as specifically set forth in this Agreement.

The Parties do not intend to create a separate legal entity under this Agreement.

II. DURATION

This Agreement shall be in effect from January 1, 2019, through December 31, 2020, unless terminated in accordance with the terms of this Agreement. The Board and DNR shall have the option to renew this Agreement for any number of extensions, the terms of which are to be mutually agreed upon prior to the expiration of the initial term or renewal term.

III. ADMINISTRATION

This Agreement shall be jointly administered by the Board and the Director of the DNR or the Director's designee. All administrative decisions concerning this Agreement shall be undertaken pursuant to the terms outlined herein.

IV. ACQUIRING AND HOLDING OF PROPERTY UNDER THIS AGREEMENT

All real and personal property used or acquired under the terms of this Agreement shall be held in the name of the Board.

V. RESPONSIBILITIES

The DNR and the Board shall retain all powers and duties conferred by their respective enabling acts, but shall assist each other in the exercise of these powers and the performance of these duties in the following manner:

A. DNR RESPONSIBILITIES

1. Provide administrative support for the Board's activities, as enumerated in the attached Exhibit A.
2. Use its authority under Iowa law if feasible to gain access to UST sites where corrective action is to be undertaken under this Agreement.
3. Assume responsibility for maintenance, storage, and storage costs for all records generated pursuant to the authority granted by 455G or this Agreement during the duration of this Agreement.
4. Develop, if necessary, document retention schedules for Fund documents.
5. Maintain the Fund electronic database.
6. Obtain input from the Board as needed to fulfill the provisions of this Agreement.
7. Cooperate and assist with Board cost recovery efforts.
8. Assist and cooperate with the Board in developing any professional services contracting documents necessary to implement the terms of this Agreement.
9. Expend funds only as authorized by 455G and the Board pursuant to this Agreement.

B. BOARD RESPONSIBILITIES

1. Prior to January 1, 2019, the Board will remove file information from each claim file that is duplicative to that held in the DNR's current UST Files, and destroy records that are past their retention date.
2. Exercise the authority granted to the Board under 455G to expend fund moneys on activities the Board determines are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and 455G.

3. Cooperate with the DNR in the implementation and administration of this Agreement to assure that in combination with existing state statutes and rules governing USTs the Fund will continue to operate as intended under 455G.
4. Subject to available funds, authorize expenditure of Fund monies to pay costs associated with the administration of this Agreement by DNR, including but not limited to staffing, training, public records management, and database maintenance as follows:
 - A monthly fee not to exceed \$18,333.33 per month for the first year of this Agreement (calendar year 2019) for a not to exceed total of \$220,000 based on actual, incurred costs.
 - A monthly fee not to exceed \$19,250.00 per month for the second year of this Agreement (calendar year 2020) for a not to exceed total of \$231,000 based on actual, incurred costs.

Payment shall be made monthly unless otherwise agreed in writing between the parties.

5. The Board retains ownership of all records generated pursuant to 455G and this Agreement.
6. The Board will pay any expenses resulting from periodic Fund audits.

VI. FINANCING

Subject to available funds, the Board shall pay all costs associated with the administration of this Agreement in accordance with the terms of this Agreement. Fund monies will remain with the Iowa Treasurer until expenditures are authorized. The Iowa Treasurer's responsibilities related to the Fund and Board, including those enumerated in Iowa Code section 455G.3, shall not be altered by this Agreement.

VII. AMENDMENT

This Agreement may be amended from time to time by written agreement of the Parties. All amendments shall be in writing, signed by both Parties, and filed with the Secretary of State.

VIII. TERMINATION

A. Termination Upon Mutual Consent. This Agreement may be terminated upon the mutual written consent of the Parties.

B. Termination By One Party. Notwithstanding anything in this Agreement to the contrary, either party to this Agreement shall have the right to terminate this Agreement without penalty by giving sixty (60) days' written notice to the other party.

C. Termination upon complete expenditure from the Fund: Any party may choose to terminate the Agreement upon 30 days written notice to the other party if all monies in the Fund have been expended.

IX. NOTICES

Whenever notices and correspondence are to be given under this Agreement, the notices shall be given by personal delivery to the other party, by first class mail, or by email, to the other party as follows:

To the Board
Iowa UST Fund Board
c/o David Steward
Assistant Attorney General
Hoover State Office Building
1305 E. Walnut St., 2nd Floor
Des Moines, IA 50319

To DNR:
Bureau Chief
Land Quality Bureau
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, IA 50319

X. APPLICABLE LAW

This Agreement is to be governed by the laws of the State of Iowa.

XI. FILING AND RECORDING

It is agreed that the DNR will electronically file this Agreement with the Secretary of State and file any amendment or modification of this Agreement within thirty days of when the Amendment is fully executed.

XII. NO THIRD PARTY BENEFICIARY RIGHTS

The rights and responsibilities of this Agreement are limited to the Parties herein, and this Agreement is not intended to convey a benefit, right, or entitlement of any kind to a party who is not a party to this Agreement. Any benefit to a third party resulting from or related to this Agreement is merely incidental and creates no legal right in a third party to enforce any provision of this Agreement against a Party.


XIII. LIMITED SCOPE OF AGREEMENT


Except as specifically addressed in this Agreement, the Agreement shall not affect the rights and responsibilities of the Board or the DNR contained in the Iowa Code and the Iowa Administrative Code.

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the Parties have entered into this Agreement and have caused their duly authorized representatives to execute this Agreement.

**IOWA COMPREHENSIVE
PETROLEUM UNDERGROUND
STORAGE TANK FUND BOARD**

**IOWA DEPARTMENT OF NATURAL
RESOURCES**

BY: 
Douglas M. Beech, Chair

BY: 
Bruce Trautman, Acting Director

DATE: 6/20/18

DATE: 6/19/18

EXHIBIT A

SCOPE OF SERVICES

Scope of Services. The Iowa Department of Natural Resources (DNR) shall provide the following services. These services are separate and distinct from services provided by the DNR for the implementation of the UST and LUST programs as required by the US EPA.

1. General Administration, Management, and Support Services.

1.1 General Support. DNR shall provide support necessary for the administration and operation of the Program, including maintaining the Access 2010 Database System provided by the Board (from the current Administrator).. The DNR will utilize the database system to review and balance financial information monthly, including reconciling information generated from the Program with the information provided by the Treasurer. The database system will be used to identify accounts payable and to classify expenses.

1.2 Database, Computer, and Data Processing Support. DNR shall maintain database, computer, and data processing support necessary or convenient to the administration and operation of the Program. This service shall be capable of supporting each of the Fund's various programs, such as the claims programs, UST operator training program, and the state lead closure program. DNR shall maintain a full range of data on Iowa UST owners, operators, sites, certain geographic conditions, claims, and other functions of the Program. Database shall be provided to the DNR by the Board (from the current Administrator).

1.3 Technical Environmental Support. DNR shall provide technical environmental support suitable for analyzing proposals and other activities of consultants to assure technically effective and cost effective corrective action, including proposals and corrective action employing innovative technologies. DNR shall also provide technical support the Board deems necessary or convenient to support the Program's cost recovery program.

1.4 Cost Control. DNR shall provide services necessary to administer cost control mechanisms mandated by Iowa Code section 455G that result in effective cost control within the authority of the Program, especially as it relates to costs for corrective action. DNR shall analyze, assess and monitor innovative technologies for purposes of developing more cost effective corrective actions.

1.5 Rulemaking. DNR shall provide services necessary for Program rulemaking. DNR shall identify policy issues which should be incorporated into the Program's rules. DNR shall research and draft policy issue papers on such issues, as necessary, for Board review and discussion, draft and distribute rules, hold public hearings, meet with interest groups, meet with the legislative rules review committee, and perform tasks necessary to formulate and adopt rules necessary to the operation of the Program.

1.6 Clerical Support. DNR shall provide clerical support necessary or convenient for the administration and operation of the Program. DNR shall prepare and distribute written materials requested by the Board or which are necessary to perform the functions of administrator for the

Program, including agendas, minutes of meetings, annual budgets, periodic reports to the Board on the activities of the administrator, quarterly and annual management overview reports as requested, and any other reports necessary to respond to reasonable requests from the Board.

1.7 General Support Services. DNR shall provide general support services incidental to and necessary or convenient for the administration and operation of the Program. General support services include the following:

- Providing toll free telephone numbers for Program support;
- Reporting to the Board;
- Day to day administration;
- Handling incoming and outgoing mail and telephone calls;
- Handling technical support for the Program;
- Monitoring compliance with the applicable laws;
- Making recommendations with respect to policy, administration and compliance with applicable laws;
- Coordinating administrative functions with the Board;
- Establishing a contact person to act as the head of the administration of the Program;
- Negotiating and administering contracts on behalf of the Program and UST owners/operators;
- Assist the Board's Legal Counsel in negotiating and administering settlements on behalf of the Program;
- Assisting the Board in short and long term planning;
- Providing the Board with data and analysis of such data;
- The development, preparation, and layout of support material, application forms, and supporting documentation;
- Participating in educational seminars for groundwater professionals and Program participants;
- Representing the Program at regional and national USEPA and ASTSWMO meetings;
- Dealing with the public and press on matters of public interest;
- Handling public records requests submitted to the Board.

2. UST Fund Claims Programs Services.

2.1 Scope of Services. DNR shall provide services necessary for the administration and operation of the Program's claims programs, including the Remedial Claims Program, Innocent Landowners Fund Claim Program, and the Opt-In Program. Responsibility for managing and disbursing the funds shall remain with the State Treasurer's Office. In the administration of the claims programs, the DNR shall consider the following factors in the evaluation and handling of claims:

- Determining if the claim is for corrective action as defined by Iowa Code chapter 455G;
- Determining if the claim involves a regulated UST;
- Determining if costs are necessary or if the action is necessary and required by DNR;
- Determining if the cost is reasonable;

- Ensuring prior budget approval was obtained.

2.2 Claims Processing Services. DNR shall provide services necessary to administer and operate the Fund claims programs, including the following:

2.2.1 Administering, handling, and adjusting remedial account and innocent landowners fund claims. These duties and responsibilities include, but are not limited to:

- Establishing a claim file upon an owner's submission of a claim;
- Investigating and determining if the claim is eligible for benefits;
- Establishing a reserve on eligible claims;
- Calculating Program co-payments and processing submitted corrective action invoices for payment of eligible claims. Invoices submitted are to be reviewed, evaluated, and accepted as submitted, rejected in total, or partially approved prior to the calculation of co-payments;
- Establishing, implementing, and operating the Program's cost control authority as it relates to claims;
- Identifying claims with cost recovery potential for referral to the Attorney General's office;
- Responding to the Attorney General's or regional counsel's request for data on claims or additional investigations;
- Communicating with UST owners/operators in writing on budgets accepted, with copies to DNR and consultant;
- Communicating with owners and operators on invoices submitted that are not approved in total;
- Responding to inquiries from owners and operators and their consultants with questions concerning claims procedures, etc.;
- Reviewing consultant's reports for additional evaluation of claims with respect to reserves, eligibility, cost recovery, and documentation of budgeted work completed;
- Negotiating settlements and agreements;
- Providing technical assistance required in conjunction with the claims programs;
- Providing appropriate environmental technical support required in conjunction with the claims programs;
- Establishing, maintaining, and operating claims procedures;
- Establishing, maintaining, and implementing claims payment criteria, procedures, and policies;
- Establishing claim priorities;
- Establishing and maintaining a database required to support the claims programs;
- Maintaining claim file records;

- Setting, reviewing, and approving payments, reserves, and other adjusting standards;
- Outlining claims specifics, such as cause of loss;
- Obtaining documentation of the site both prior to and at the time of remediation;
- Determining if other coverage exists;
- Identifying any third-party recovery source;
- Ascertaining whether any third-party liability exists;
- Recommending reserve changes and payments;
- Preparing monthly summary reports, claims summaries, paid loss summaries, trend analysis reporting, and such other claims related reports as are requested by the Board.

2.2.2 DNR shall do the following with regard to opt-in claims:

- Assist owners and operators to determine whether they qualify for benefits;
- Determine the status of the sites;
- Determine the amount of opt-in benefits available;
- Communicate with claimants regarding their claims;
- Provide for payment or credit of applicable benefits.

2.2.3 UST Operator Training Program. DNR shall provide services necessary to implement, administer, operate, and phase out the program for training UST operators pursuant to Iowa Code Section 455G.3(9). DNR shall approve entities qualified to provide UST operator training that meets training standards required by Chapter 135 of the Iowa Administrative Code. DNR shall maintain records sufficient to identify UST operators trained under this program, and to ensure efficient and appropriate use of Fund moneys.

2.2.4 State-Lead Contracts. DNR shall provide services necessary to implement, administer, operate, and phase out the State-Lead Closure Contract projects (Closure Contract and NFA Re-Openers). DNR's duties and responsibilities shall include the following:

- Identifying sites that qualify for a project;
- Identifying all Fund eligible parties in a project;
- Determining the ability to pay of each of the owners and operators affected by a project, as necessary;
- Obtaining Board approval to initiate a project;
- Preparation of appropriate RFP documents, including the scope of work;
- Providing public notice of a project;
- Responding to RFP questions;
- The review and award of a contract for a project;

- Project management, including ongoing contact with participants through direct contact, mailing, press releases and other reporting requirements;
- Maintaining communications with appropriate government entities, including appropriate public officials, utility managers, and safety professionals;
- Negotiating contracts for approval by the Board;
- Providing day-to-day oversight and administration of a contract through completion of the project;
- Reviewing change order requests for appropriateness and providing them to the Board for review and approval.