



FREQUENTLY ASKED QUESTIONS (FAQ) CONCERNING THE DEPARTMENT OF
NATURAL RESOURCES' UNDERGROUND STORAGE TANK PROGRAM AND THE IOWA
UNDERGROUND STORAGE TANK FUND
January 2021

What is the Iowa Underground Storage Tank Program?

The Iowa Underground Storage Tank (UST) program (the "Program") was established by the Iowa legislature in Iowa Code § 455B Part 8 (455B.471-455B.479).

The legislature found that the release of regulated substances from underground storage tanks constituted a threat to the public health and the environment, so it authorized the Environmental Protection Commission (EPC) to promulgate rules to address such releases. Subsequently, the EPC enacted comprehensive regulations governing UST registration, spill and leak liability, and risk analysis, among other Program elements.

The Iowa DNR has jurisdiction over the Program and administers the regulations that specify which parties are responsible for site remediation, what corrective actions must be undertaken in order to address known or potential risks from the contamination, and when a site no longer represents a risk to the public or the environment.

What is the Iowa Underground Storage Tank Fund?

The Iowa Underground Storage Tank Fund (the Fund) was established by the Iowa legislature in Iowa Code § 455G. The Fund is overseen by a Fund Board. The Director of the Iowa DNR has a seat on that Board, but the Board operates independently from the DNR. The Board authorizes use of monies from the Fund for site assessments and corrective actions where contamination has resulted from releases of hazardous substances. While the Fund provides monies for site investigation and remediation, the actual site investigation and remediation work must meet the requirements established by the Program.

Are the two programs run by the DNR?

The DNR and Fund are separate and distinct programs. The DNR, by virtue of an intergovernmental agreement, manages the Fund on behalf of the State. While DNR and Fund program staff may coordinate efforts, the requirements, obligations and oversight of the individual programs are distinct.

Who is liable for cleanup costs at a site where hazardous wastes have leaked from an UST?

The Iowa Supreme Court addressed this question in the context of a hazardous waste spill in the case *Blue Chip Enterprises, Inc. et al v. IDNR*, 528 N.W.2d 619 (Iowa 1995). The Supreme Court's *Blue Chip* decision is generally interpreted to hold that a property owner must have either caused or contributed to contamination in order to be legally liable for site remediation costs. *Blue Chip* did not specifically involve a leaking UST (LUST) site and the issue of

whether that ruling is binding on LUST sites has not been litigated. However, based on the Iowa Code, the Iowa Administrative Code, and the reasoning found in *Blue Chip*, the DNR's current interpretation of the law is that only the owner and/or operator of the UST *at the time of the release* can be held liable for site remediation costs. An exception to this policy would be if a new owner/operator, including a new property owner, were to do something that contributes to the contamination or that disturbs the site in a way that spreads or increases exposure to the contamination.

I'm a new owner of a contaminated site. If the responsible party is no longer in existence or otherwise will not pay for site remediation, what happens?

In some cases, the new owner will take on the role of claimant at the site so that Fund benefits can be used. But, if there is no viable responsible party and the current owner refuses to take on the role of claimant, then nothing will happen at the site and it will remain a contaminated site until necessary action is taken toward remediation.

An owner of a site with existing petroleum contamination who is not the responsible party may have responsibility for site investigation and evaluation which may include determining the scope of contamination at the site and monitoring the contamination to determine if the contamination is increasing, decreasing or moving.

What is my liability as a new owner if I agree to act as claimant?

It remains the DNR's position that when a responsible party (a former tank owner or operator) sells an UST Fund-eligible property to a new owner, and both sign the Remedial Benefits/Duties Assignment Form, the original tank owner remains the responsible party for corrective actions necessary due to a release. The new owner *does not* become a responsible party simply by signing this form. This is because the mere signing of the assignment form, regardless of its content, cannot reallocate liability that is prescribed by law. The DNR has no legal involvement in the benefits transfer. In effect, if a new owner agrees to work with the DNR to address risks at the site caused by a release, the DNR is voluntarily agreeing to not pursue enforcement against the original responsible owner but rather to work with the new property owner/assignee so that the site can more effectively be managed to address those health and environmental risks.

I am not the responsibility party for the contamination at the site I now own. Can I use money from the Fund to address risks at the site?

Yes, if you accept a transfer of the UST Fund claim benefits and comply with the Fund requirements for that claim. If the site meets UST Fund eligibility requirements, Fund monies for site investigation and remediation activities may be used by third-party contractors retained by the Fund if you allow access to the site. The activities will be reviewed by the DNR to be sure they are achieving the goals of the DNR's UST Program.

Under the Fund's rules, site remediation costs are capped at \$1,000,000.00 for any given site.

Will use of Fund monies make me a Responsible Party under the DNR's UST Program?

No. Only parties that were owners/operators when contamination occurred are responsible parties. As noted above, the only way a new owner would become a responsible party is if the new owner contributed to the contamination on the site or disturbed the contamination in some way that increases exposure to the contamination.

Can the DNR provide me with a blanket liability waiver if I agree to take on the role of Claimant and use Fund monies to address contamination risks at the site?

No. The DNR cannot in good faith provide any party with a blanket liability waiver. The applicable law, administrative rules, and Supreme Court caselaw are provided so that you are able to make an informed decision about risks associated with the site and with use of Fund monies for site remediation activities. If you are uncertain about what those risks are, you should discuss the information in this FAQ with legal counsel.

What is the status of the Fund?

There is currently proposed legislation before the Iowa legislature that would terminate the Fund in 2022. The future of the Fund and the Fund Board should be clarified by the legislature and the Governor in the coming year.

What will happen when the Fund no longer exists?

If the Fund and the Fund Board are terminated, it is likely that there will be no state funding available from the Fund for site remediation activities at existing eligible sites. It is not clear at this time when that might occur, whether additional funding might be available, or if known sites may be eligible for funds from the state of Iowa in the future. Again, the future of the Fund should be clarified by the legislature and the Governor in the coming year.

Will the DNR's UST Program continue after the Fund no longer exists?

Yes. The DNR's L/UST Program is separate from the Fund.

DISCLAIMER – This FAQ is intended to provide general information concerning state programs. It is not legal advice. If you have any questions concerning the information in this FAQ you should contact private legal counsel.