

CHAPTER 10  
ELIGIBILITY FOR INSURANCE

**591—10.1(455G) Eligibility.**

**10.1(1)** To be eligible for financial responsibility coverage without being required to meet the certification requirements of either subrule 10.1(3) or 10.1(4), owner/operators shall meet the following requirements:

*a.* Comply with tank technical standards as required under 567—Chapter 135, Iowa Administrative Code.

*b.* Meet clean site contamination standards as promulgated by the Iowa environmental protection commission on total hydrocarbons in soil, and groundwater levels for benzene, toluene, and xylene. Testing must meet department of natural resources closing standard requirements, or provide equivalent assurance that tank sites are free from or below acceptable standards of contamination using other methods of testing, if testing can be certified. Tightness tests by themselves shall not be acceptable as conclusive evidence. All testing must be independently performed.

*c.* Meet upgrade requirement dates as established in Iowa Code chapter 455G.

*d.* Contaminated sites which are not eligible for remedial benefits may be insured providing the owner/operator signs a financial responsibility affidavit certifying:

(1) Owner/operator will investigate the site contamination and pay for any required remediation or monitoring costs.

(2) Owner/operator will bring the tanks into compliance with new or upgrade standards set forth in IAC 567—Chapter 135, and as specified by Iowa Code section 455G.11.

(3) Owner/operator has the financial resources available to finance the requirements of this paragraph, subparagraphs (1) and (2).

*e.* Contaminated sites which are eligible for benefits under Iowa Code section 455G.9 may be insured if the existing contamination is the result of tanks for which that section provides benefits. If the existing contamination is in whole or part related to a release for which benefits under 455G.9 are not available, then the owner/operator must comply with paragraph “*d*” or subrule 10.1(3) or 10.1(4), for that portion of the release which is not eligible for benefits, unless the requirements of 591—paragraph 11.1(3) “*p*” have been documented.

**10.1(2)** In addition to the above-mentioned requirements, the following standards shall apply generally to all owner/operators:

*a.* Sites under remediation shall be eligible for financial responsibility coverage; however, no preexisting contamination shall be paid for through the financial responsibility account.

*b.* Owner/operators shall be responsible for maintaining their tank systems. Each incident due to a release or spill/overflow, must be reported to the petroleum underground storage tank fund (UST board) or administrator. The deductible shall apply to each incident reported.

*c.* Sites may be inspected by the UST board or its representative at any time; records, equipment and testing may be required on site, including additional groundwater and soil tests; testing costs shall be borne by owner/operator.

*d.* For renewal, tank tightness tests may be required, which shall be independently certified and meet established department of natural resources standards.

*e.* Coverage shall be issued per location. The policy will be issued showing the applicant as the named insured. Additional insureds may be named based on insurable interest.

*f.* The board may require proof of ability to meet deductible costs prior to issuing a policy.

*g.* A policy shall not be renewed if a deductible repayment or repayment schedule has not been made prior to effective date of the renewal.

*h.* Premiums received are transferred to the Iowa comprehensive petroleum underground storage tank insurance account.

*i.* If there has been a failure to demonstrate financial responsibility coverage or if there has been a lapse in financial responsibility coverage since October 26, 1990, any application for financial responsibility coverage after December 1, 1996, acceptable to the UST board or its representative, will result in financial responsibility coverage which begins on the date the policy is issued unless backdated coverage is allowed under paragraph "*j.*" There shall be no backdating of financial responsibility coverage for such applications.

*j.* For sites which qualified for innocent landowner benefits pursuant to 591 IAC 11.1(5), if there has been a lapse in financial responsibility coverage since October 26, 1990, for tanks which were active, coverage may be provided for dates beginning October 26, 1990, through the date the owner was required by state or federal law to maintain financial responsibility coverage on the tanks. There shall be no backdated coverage provided for time frames during which the owner was required by state and federal law to maintain financial responsibility coverage on the tanks.

**10.1(3)** In those situations where an owner/operator's tanks at a site meet new tank or upgrade standards established pursuant to Iowa Code chapter 455G, but the site does not meet the clean site contamination standards described in 591—paragraph 10.1(1)"*b*" and the owner/operator does not qualify for remedial benefits pursuant to Iowa Code section 455G.9, an owner/operator may be eligible for financial responsibility coverage if the owner/operator certifies to the following:

*a.* The owner/operator is responsible for the required investigation, monitoring, and remediation of the existing contamination, and

*b.* The owner/operator has sufficient financial resources available to pay for the required investigation, monitoring, and remediation of the existing contamination, and

*c.* All tanks at the site meet either the new tank standards or the upgrade standards of Iowa Code chapter 455G.

**10.1(4)** In those situations where all or some of an owner/operator's tanks at a site do not meet new tank or upgrade standards established pursuant to Iowa Code chapter 455G and the site does not meet the clean site standards described in 591—paragraph 10.1(1)"*b*" and the owner/operator does not qualify for remedial benefits pursuant to Iowa Code section 455G.9, an owner/operator may be eligible for financial responsibility coverage if the owner certifies to the following:

*a.* The certification requirements of 591—paragraphs 10.1(3) "*a*" and "*b*," and

*b.* The owner/operator will bring all tanks at the site into compliance with either the new tank standards or the upgrade standards of Iowa Code chapter 455G no later than required by Iowa Code chapter 455G and the owner/operator has sufficient financial resources to do so.

**10.1(5)** Definitions.

"*Administrator*" means the Iowa comprehensive petroleum underground storage tank fund board administrator as provided in Iowa Code section 455G.5.

"*Aggregate*" means the total annual amount that will be paid on all claims or suits seeking damages under a policy issued by the board.

“*Board*” means the Iowa comprehensive petroleum underground storage tank fund board.

“*Certificate of clean*” means a document noting that a level of acceptable cleanup has been achieved and approved by the department and as covered in Iowa Code section 455B.304(15).

“*Deductible*” means the portion of a claim paid by insureds on the policy issued by the board.

“*Department*” means the Iowa department of natural resources (DNR).

“*Governmental action*” means an order to do additional testing or corrective action by a governmental agency after a certificate of clean or a monitoring certificate has been issued to a petroleum underground storage tank site regulated by the department.

“*Governmental agency*” means either the Iowa department of natural resources or the United States Environmental Protection Agency.

“*Monitoring certificate*” means a document noting that an acceptable level of cleanup has occurred and has been approved by the department as covered in Iowa Code section 455B.474(1)“*h.*”

“*Self-insured retention*” means the portion of a claim paid by insureds on a policy issued by the board, and includes the cost of adjusting, legal fees, court costs and any other investigative cost associated with the claim.

**10.1(6) Surcharge.**

*a.* Owners who have not complied with upgrade or replacement requirements as noted in 591—Chapter 10 shall pay a surcharge of \$800 per tank per policy year until such time that the tank fully meets upgrade or replacement requirements as noted herein, or the tank has been permanently taken out of service in accordance with rules promulgated by the DNR. The surcharge is fully earned and shall not be refunded, even if an upgrade takes place during the policy term.

*b.* Owners who certify to the board in writing that all tanks at the insured site will be brought into compliance will not have the surcharge issued on their policy provided:

(1) There is a written contract between the owner and a licensed installer as defined in 591—Chapter 15.

(2) The contract sets forth that the upgrade or replacement will meet all the necessary requirements to meet the standards established in 567—Chapter 135. In addition, site conditions as specified in 591—11.4(455B,455G) as environmentally or not environmentally sensitive shall be stated within the body of the contract.

(3) The contract is binding on both parties and establishes dates of performance, cost and indicates specified information relative to the work to be performed.

(4) That a nonrefundable deposit, to apply toward the cost of the system of at least 5 percent or \$1000, whichever is less, be included within the framework of the contract, acknowledged by both parties.

(5) That the work scheduled be started in time sufficient to have the upgrade completed by January 1, 1995.

*c.* Failure on the part of the installer to meet the January 1, 1995, upgrade or replacement date will subject the installer to loss of license.

*d.* Failure to meet the December 22, 1998, upgrade or replacement date will subject the owner/operator to cancellation of insurance coverage.

**591—10.2(455G) Deductibles.** The following deductibles are established under the Iowa plan:

**10.2(1)** For locations with three tanks or less, there is a \$5,000 deductible.

**10.2(2)** For locations with more than three tanks, there is a \$10,000 deductible at minimum.

**10.2(3)** A \$25,000 deductible may be used if it is determined that the scope of the risk warrants higher retention levels, at the discretion of the board or administrator.

**10.2(4)** Deductibles may be reduced from \$10,000 to \$5,000 for sites with more than three tanks for an additional premium payment of 50 percent of policy totals with administrative approval. There is no provision to buy down deductibles on sites with \$5,000 or \$25,000 deductibles.

**591—10.3(455G) Premiums.** Premiums are predetermined by Iowa Code chapter 455G. In addition, the following standards shall apply:

**10.3(1)** Premiums for a site shall be the sum of rates specified in Iowa Code subsection 455G.11(4) times the number of upgraded tanks, plus two times those rates for each nonupgraded tank on the site.

**10.3(2)** Premiums as promulgated under Iowa Code chapter 455G are applicable from July 1 to June 30. Applications for coverage will pay legislatively mandated premiums for that time frame.

**10.3(3)** All premiums shall be 100 percent earned upon issuance of insurance coverage. No refunds will be made for any reason after a policy has been issued.

**10.3(4)** Financial responsibility premiums on new policies shall be due on application for coverage and prior to binding. Premiums shall be made payable to the Iowa UST program. Coverage shall not be bound until premiums are received.

**10.3(5)** Renewal premiums. Mailing of the premium notice shall be conclusive proof that a billing was received. A ten-day expiration notice will be mailed on any policy for which the invoiced renewal premiums are not timely received. Premiums shall be made payable to the Iowa UST Program in accordance with the following:

*a.* For sites with premiums which equal or exceed twice the premium of the previous policy year, for an equal or lesser number of tanks as the previous policy year, an initial installment of 50 percent of the premium shall be paid prior to policy renewal with the second 50 percent installment due 180 days after policy renewal. The full premium is earned upon renewal.

*b.* For sites with premiums which do not equal or exceed twice the premium of the previous policy year for an equal or lesser number of tanks as the previous policy year, 100 percent of the premium shall be paid prior to policy renewal.

**10.3(6)** Cancellation for nonpayment or misrepresentation shall be effective 10 days after mailing. Cancellation for other reasons will be effective 60 days after mailing.

**10.3(7)** Premiums for extensions of retroactive coverage shall be equal to 50 percent of the annual premium per policy. Premiums shall be due at the time of the extension request. Nonpayment shall result in immediate termination of coverage, subject to a 10-day nonpayment cancellation notice.

**10.3(8)** Financial hardship, waiver of insurance premium. The board may waive immediate payments of insurance premiums for an owner of an underground storage tank who is financially unable to pay the insurance premium subject to the following conditions:

*a.* The owner must apply for financial hardship benefits and document that the owner is unable to pay the necessary premiums;

*b.* Owners applying for a waiver of insurance premiums must complete the board's insurance premium waiver application;

c. A waiver may be granted if the board determines that the applicant is unable to pay the necessary insurance premiums. The board may consider, among other criteria, the applicant's net worth, income, expenses, and cash flow projections using similar documentation as required pursuant to 591—Chapter 12;

d. All tanks existing on site must be permanently closed as soon as practicable following notification that premiums are waived for the site;

e. All premiums which have been waived shall become a lien on the property consistent with Iowa Code section 455G.13(5);

f. The lien shall be equal to the amount of all back premiums, current premiums, and all applicable surcharges and shall include interest at the prime interest rate as published by the Wall Street Journal on the first business day of each year, compounded yearly.

**591—10.4(455G) Risk factors.** In order to meet scheduled premiums as required by Iowa Code chapter 455G, all tanks must comply with standards enumerated, or they shall be charged two times the premium indicated. In determining risk-related premiums, which are to be actuarially determined, the following factors shall be considered:

**10.4(1)** The type of installation and equipment including, for example, steel tanks with cathodic protection, fiberglass or double wall construction as part of the risk classification process.

**10.4(2)** The type of leak detection used and monitoring performed by the owner/operator.

**10.4(3)** Spill/overflow protection used.

**10.4(4)** Geology of the site and other factors, including:

a. Distance to other structures or buildings from the tank site.

b. Distance to drinking water or other water wells for the tank site.

c. Type of soil conditions present.

d. Seasonal water table.

e. The topography of the land.

f. Depth to bedrock.

**10.4(5)** Prior claims history or remediation history.

**10.4(6)** Experience of management and their attitude toward clean environment issues.

**591—10.5(455G) Property transfer insurance.**

**10.5(1)** *Property transfer insurance coverage provisions and underwriting requirements.*

a. Property transfer insurance shall be issued on a claims-made basis. Only claims or suits as defined in the policy which are reported to the board after the effective date of the policy, caused by a governmental agency requesting a governmental action, are covered.

b. The retroactive date shall be the date insurance is initially issued. If coverage expires, is nonrenewed by an insured or canceled, any subsequent application for coverage shall meet all requirements as established in this subrule and shall have a new retroactive date. Any insured under the coverage may request renewal, but only those paying the annual premium shall be entitled to benefits as described in the property transfer policy or these subrules.

c. Insurance issued by the board shall cover only the liabilities associated with property transfer coverage as defined in the property transfer policy. No insurance shall be provided for activities not described by the potential insured in their application. The board may reject placement of coverage if the factual situation as presented by the applicant is not consistent with these rules. Any applicant that is denied coverage may appeal the decision as provided by rule.

d. Should an individual or company or any other organization apply for insurance, each party so applying shall be included in the overall coverage and limit. The policy shall not be issued separately to each applicant but shall instead be in the name of the first party so applying. Limits shall apply only to the type of liability covered and shall not be stacked for either individuals or companies covered hereunder, whether one or more premiums have been paid.

e. Coverage provided in the policy shall apply only to the cost of corrective action when a governmental agency determines that a governmental action requiring additional corrective action is necessary, after a monitoring or a certificate of clean was issued by the department. If the governmental agency requests a governmental action while a site is being reimbursed under Iowa Code section 455G.9, the cost of additional corrective action as mandated by the governmental agency shall be paid under Iowa Code section 455G.9, provided that all other eligibility requirements as established by Code or rule have been met. If the insureds on the property transfer coverage are not eligible for benefits, then the property transfer will pay for the cost of required governmental action. Only the cost of corrective action to a point where conditions no longer exist giving rise to the governmental action is payable, subject to the limit of liability and all other property transfer policy terms and conditions.

f. Coverage may be issued if:

- (1) The department has issued a certificate of clean or a monitoring certificate,
- (2) Monitoring as required is conducted,
- (3) Annual monitoring tests, if under a certificate of monitoring, are provided to the administrator.

All sites covered hereunder shall provide annual monitoring certificates which are verified by an independent party. This includes any site where the department has issued a certificate of clean. Neither the insurance program nor any benefit program offered by the state shall reimburse the cost of monitoring, unless the site is otherwise eligible for benefits under Iowa Code section 455G.9.

**10.5(2) *Limits of liability.*** Limits of liability shall total \$500,000 per occurrence and in the aggregate for all pollution liability, including corrective action costs as defined by the policy, arising out of a covered claim. This limit is in effect regardless of the number of insureds on the policy who have paid a premium for coverage.

**10.5(3) *Premiums.***

a. Premiums shall be 100 percent earned upon the binding of insurance. No refunds will be made for any reason after binding.

b. Initial premiums shall be due 15 days from the date of the billing to the insured. Renewal premiums are due 10 days prior to the policy's expiration date. Mailing of the premium notice shall be conclusive proof that a billing was received.

c. Rates shall be calculated as provided by Iowa Code subsection 455G.11(10).

d. The minimum premium is \$250 per policy per location. Each party requesting property transfer insurance shall pay the annual premium. Coverage will be effected or renewed for those individuals or companies actually paying for the coverage.

e. All policies which are transferred shall have a \$50 transfer fee.

**10.5(4) Exclusions to coverage.**

a. The property transfer insurance will not pay for corrective action costs for any preexisting condition, unless:

(1) The release was previously reported to the department and the additional corrective action is as a result of a governmental action by a governmental agency,

(2) A certificate of clean or monitoring has been issued by the department.

b. The property transfer policy has no obligation and will not pay corrective action costs, whether requested by a governmental agency or not, for any new release, covering any substance for any reason.

c. Environmental damage requiring monitoring or corrective action caused by any substance other than petroleum, as defined in Iowa Code subsection 455G.2(14) and 591—Chapters 10 and 11, is not covered for any reason, even if the governmental agency requests the activity.

d. Only orders from a governmental agency shall be considered in determining whether the benefits as described in the policy apply. Additional cleanup ordered by any organization, except a court of applicable jurisdiction, other than as defined, shall not be included. Only the additional cleanup required by governmental action shall be paid by the policy.

e. No coverage shall be provided for any third-party liability. As used here, third-party liability is any party other than the insureds on the policy.

f. No coverage shall be provided for loss associated with use of the property, business interruption or loss of profits. Coverage shall only apply to the actual usual, reasonable and necessary corrective action work required to return the site to a monitoring-only site as defined in Iowa Code section 455B.474(1) "h."

g. The cost of any annual monitoring or testing required under this chapter, to apply for coverage.

h. Costs of corrective action should a plume of existing contamination migrate off premises.

**10.5(5) Annual requirements and transfer of coverage to other parties.**

a. Each insured under this policy shall apply annually for coverage, using board-provided application forms. The interest of the party applying for coverage shall clearly be delineated.

b. Coverage may be transferred to any other person or organization provided that documentation of the transfer and the transfer fee accompany the request. The retroactive date shall remain the same, unless provisions as noted under this subrule in the event of cancellation or nonrenewal occur.

c. Annual testing as required by the department shall be furnished to the administrator with the application. Failure to supply monitoring records as required by the department shall cause the policy to be nonrenewed or canceled.

**10.5(6) Claims handling.** Claims presented hereunder shall be individually investigated and settled by the board per the terms and conditions of coverage in effect. The administrator will assign an adjuster for the purposes of this rule and may, subject to board approval, retain expert assistance. The administrator will recommend a resolution of the case to the board. Expense incurred in the adjusting or legal defense process shall be included within the self-insured retention portion of the account, should a self-insured retention policy be issued.

**10.5(7) Deductibles and other conditions.**

- a. The deductible shall be \$10,000.
- b. An insured may request a reduction in the deductible to \$5000 with the payment of a 50 percent surcharge on the total policy premium. The board is not required to provide this option.
- c. No retroactive or "tail" insurance shall be offered.
- d. The board or its representative may audit the base underwriting data provided.
- e. Cancellation shall be 10 days for nonpayment of premium and 60 days for all other reasons.

These rules are intended to implement Iowa Code chapter 455G.

[Filed 10/26/90, Notice 3/7/90—published 11/14/90, effective 12/19/90]

[Filed 12/6/91, Notice 10/2/91—published 12/25/91, effective 1/29/92]

[Filed 8/14/92, Notice 2/19/92—published 9/2/92, effective 10/7/92]

[Filed 10/5/93, Notice 8/18/93—published 10/27/93, effective 12/1/93]

[Filed 5/4/95, Notice 3/15/95—published 5/24/95, effective 6/28/95]

[Filed emergency 6/28/95—published 7/19/95, effective 6/28/95]

[Filed emergency 8/11/95—published 8/30/95, effective 8/11/95]

[Filed 11/3/95, Notice 8/30/95—published 11/22/95, effective 12/27/95]

[Filed 12/26/95, Notice 7/19/95—published 1/17/96, effective 2/21/96]

[Filed 5/17/96, Notice 3/13/96—published 6/5/96, effective 7/10/96]

[Filed 8/9/96, Notice 6/5/96—published 8/28/96, effective 10/2/96]

[Filed 6/26/97, Notice 4/23/97—published 7/16/97, effective 8/20/97]