

CHAPTER 136  
FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS

**567—136.1(455B) Applicability.**

**136.1(1)** This chapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this rule.

**136.1(2)** Owners and operators of petroleum UST systems are subject to these requirements.

**136.1(3)** State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this chapter.

**136.1(4)** The requirements of this chapter do not apply to owners and operators of farm or residential tanks of 1,100 gallons or less capacity or any UST system described in 567—paragraph 135.1(3) “b” or “c.”

**136.1(5)** If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

**567—136.2(455B) Compliance dates.** Rescinded IAB 4/17/02, effective 5/22/02.

**567—136.3(455B) Definition of terms.**

“*Accidental release*” means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

“*Bodily injury*” shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

“*Chief financial officer*,” in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

“*Controlling interest*” means direct ownership of at least 50 percent of the voting stock of another entity.

“*Director*” means the director of the Iowa department of natural resources or local agency responsible for carrying out an approved UST program.

“*Financial reporting year*” means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared:

1. A 10-K report submitted to the SEC;
2. An annual report of tangible net worth submitted to Dun and Bradstreet; or
3. Annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.

“Financial reporting year” may thus comprise a fiscal- or a calendar-year period.

“*Legal defense cost*” is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought;

1. By EPA or a state to require corrective action or to recover the costs of corrective action;
2. By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
3. By any person to enforce the terms of a financial assurance mechanism.

“*Local government*” means counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution and special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

“*Occurrence*” means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

NOTE: This definition is intended to assist in the understanding of these rules and is not intended either to limit the meaning of “occurrence” in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of “occurrence.”

“*Owner or operator*,” when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

“*Petroleum marketing facilities*” include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

“*Petroleum marketing firms*” are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

“*Property damage*” shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

“*Provider of financial assurance*” means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in rules 136.6(455B) to 136.16(455B), including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

“*Substantial business relationship*” means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

“*Substantial governmental relationship*” means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from a clear commonality of interest in the event of UST release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

“*Tangible net worth*” means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, “assets” means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

“*Termination*” under 136.8(2) “a” and “b” means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy date for compliance established in rule 136.2(455B).

**567—136.4(455B) Amount and scope of required financial responsibility.**

**136.4(1)** Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

*a.* For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

*b.* For all other owners or operators of petroleum underground storage tanks; \$500,000.

**136.4(2)** Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

*a.* For owners or operators of 1 to 100 petroleum underground storage tanks, \$1 million.

*b.* For owners or operators of 101 or more petroleum underground storage tanks, \$2 million.

**136.4(3)** For the purposes of subrules 136.4(2) and 136.4(6) only, a petroleum underground storage tank means a single containment unit and does not mean combinations of single containment units.

**136.4(4)** Except as provided in subrule 136.4(5), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

*a.* Taking corrective action;

*b.* Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

*c.* Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subrules 136.4(1) and 136.4(2).

**136.4(5)** If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

**136.4(6)** Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

**136.4(7)** The amounts of assurance required under this rule exclude legal defense costs.

**136.4(8)** The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

**567—136.5(455B) Allowable mechanisms and combinations of mechanisms.**

**136.5(1)** Subject to the limitations of subrule 136.5(2):

*a.* An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in rules 136.6(455B) to 136.12(455B) to demonstrate financial responsibility under this chapter for one or more underground storage tanks, and

*b.* A local government owner or operator may use any one or combination of the mechanisms listed in rules 136.13(455B) to 136.16(455B) to demonstrate financial responsibility under this chapter for one or more underground storage tanks.

**136.5(2)** An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this chapter, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

**567—136.6(455B) Financial test of self-insurance.**

**136.6(1)** An owner or operator, and/or guarantor, may satisfy the requirements of rule 136.4(455B) by passing a financial test as specified in this rule. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of subrule 136.6(2) or 136.6(3) based on year-end financial statements for the latest completed fiscal year.

**136.6(2)** Financial test alternative I.

*a.* The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(1) The total of the applicable aggregate amount required by rule 136.4(455B), based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the Iowa department of natural resources under this rule.

(2) The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 264.147, 265.143, 265.145, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

(3) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

*b.* The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.

*c.* The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subrule 136.6(4).

*d.* The owner or operator, and/or guarantor, must either:

(1) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(2) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

*e.* The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

**136.6(3) Financial test alternative II.**

*a.* The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1) substituting the appropriate amounts specified in 136.4(2), paragraphs “*a*” and “*b*,” for the “amount of liability coverage” each time specified in that section.

*b.* The owner, operator, or guarantor must have a tangible net worth of at least \$10 million.

*c.* The owner, operator, or guarantor must have a tangible net worth of at least six times the amount of the applicable UST aggregate.

*d.* At least 90 percent of the total assets of the owner, operator, or guarantor must be U.S. assets, or U.S. assets at least six times the amount of the applicable UST aggregate, and either:

- (1) Net working capital at least six times the applicable UST aggregate; or
- (2) A current bond rating for the most recent bond issue of AAA, AA, A or BBB as issued by Standard and Poor’s, or Aaa, Aa, A or Baa as issued by Moody’s.

*e.* The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant’s report of the examination.

*f.* The firm’s year-end financial statements cannot include an adverse auditor’s opinion, a disclaimer of opinion, or a “going concern” qualification.

*g.* The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subrule 136.6(4).

*h.* If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(1) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(2) In connection with that comparison, no matters came to the accountant’s attention which caused the belief that the specified data should be adjusted.

**136.6(4)** To demonstrate that it meets the financial test under subrule 136.6(2) or 136.6(3), the chief financial officer of the owner or operator, and/or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: “the financial test of self-insurance,” and/or “guarantee”] to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” and/or “nonsudden accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: “owner or operator,” and/or “guarantor”]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to subrule 135.3(3)].

A [insert: “financial test,” and/or “guarantee”] is also used by this [insert: “owner or operator,” or “guarantor”] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 50 CFR Parts 271 and 145:

|  |          |
|--|----------|
| EPA Regulation:                                      | Amount   |
| Closure (§§264.143 and 265.143) . . . . .            | \$ _____ |
| Postclosure Care (§§264.145 and 265.145) . . . . .   | \$ _____ |
| Liability Coverage (§§264.147 and 265.147) . . . . . | \$ _____ |
| Corrective Action (§264.101(b)) . . . . .            | \$ _____ |
| Plugging and Abandonment (§144.63) . . . . .         | \$ _____ |

|                                    |          |
|------------------------------------|----------|
| Authorized State Programs:         |          |
| Closure . . . . .                  | \$ _____ |
| Postclosure Care . . . . .         | \$ _____ |
| Liability Coverage . . . . .       | \$ _____ |
| Corrective Action . . . . .        | \$ _____ |
| Plugging and Abandonment . . . . . | \$ _____ |
| TOTAL . . . . .                    | \$ _____ |

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of subrule 136.6(2) are being used to demonstrate compliance with the financial test requirements. Fill in the information of Alternative II if the criteria of subrule 136.6(3) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee . . . . . \$ \_\_\_\_\_
  2. Amount of corrective action, closure and postclosure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee . . . . . \$ \_\_\_\_\_
  3. Sum of lines 1 and 2 . . . . . \$ \_\_\_\_\_
  4. Total tangible assets . . . . . \$ \_\_\_\_\_
  5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] . . . . . \$ \_\_\_\_\_
  6. Tangible net worth [subtract line 5 from line 4] . . . . . \$ \_\_\_\_\_
- |   |       |       |
|---|-------|-------|
|   | Yes   | No    |
| 7. Is line 6 at least \$10 million? . . . . .   | _____ | _____ |
| 8. Is line 6 at least 10 times line 3? . . . . .  | _____ | _____ |
| 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? . . . . .   | _____ | _____ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? . . . . .   | _____ | _____ |
| 11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? . . . . .  | _____ | _____ |
| 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] . . . . . | _____ | _____ |

ALTERNATIVE II

- 1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee ..... \$ \_\_\_\_\_
- 2. Amount of corrective action, closure and postclosure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee .....
- 3. Sum of lines 1 and 2 ..... \$ \_\_\_\_\_
- 4. Total tangible assets ..... \$ \_\_\_\_\_
- 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] ..... \$ \_\_\_\_\_
- 6. Tangible net worth [subtract line 5 from line 4] ..... \$ \_\_\_\_\_
- 7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] ..... \$ \_\_\_\_\_
- 8. Is line 6 at least \$10 million? .....      \_\_\_\_\_      \_\_\_\_\_
- 9. Is line 6 at least 6 times line 3? .....      \_\_\_\_\_      \_\_\_\_\_
- 10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.] .....      \_\_\_\_\_      \_\_\_\_\_
- 11. Is line 7 at least 6 times line 3?  
    [Fill in either lines 12-15 or lines 16-18.] .....      \_\_\_\_\_      \_\_\_\_\_
- 12. Current assets ..... \$ \_\_\_\_\_
- 13. Current liabilities ..... \$ \_\_\_\_\_
- 14. Net working capital [subtract line 13 from line 12] ..... \$ \_\_\_\_\_
- 15. Is line 14 at least 6 times line 3? .....      \_\_\_\_\_      \_\_\_\_\_
- 16. Current bond rating of most recent bond issue .....
- 17. Name of rating service .....
- 18. Date of maturity of bond .....
- 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? .....      \_\_\_\_\_      \_\_\_\_\_

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in subrule 136.6(4) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

**136.6(5)** If an owner or operator using the test to provide financial assurance finds that the requirements of the financial test based on the year-end financial statements are no longer being met, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

**136.6(6)** The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of subrule 136.6(2) or 136.6(3) or 136.6(4), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

**136.6(7)** If the owner or operator fails to obtain alternate assurance within 150 days of finding that the requirements of the financial test based on the year-end financial statements are no longer being met, or within 30 days of notification by the director that the requirements of the financial test are no longer being met, the owner or operator must notify the director of such failure within 10 days.

#### **567—136.7(455B) Guarantee.**

**136.7(1)** An owner or operator may satisfy the requirements of rule 136.4(455B) by obtaining guarantee that conforms to the requirements of this rule. The guarantor must be:

*a.* A firm that possesses a controlling interest in the owner or operator; possesses a controlling interest in such a firm; or is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

*b.* A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

**136.7(2)** Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of rule 136.6(455B) based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in subrule 136.6(4) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that the requirements of the financial test of subrules 136.6(2) or 136.6(3) and 136.6(4) are no longer being met, the guarantor must notify the owner or operator within 10 days of receiving such notification from the director. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternate coverage as specified in subrule 136.23(3).

**136.7(3)** The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of Iowa, herein referred to as guarantor, to the Iowa Department of Natural Resources and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

1. Guarantor meets or exceeds the financial test criteria of subrules 567—136.6(2) or 136.6(3) and 136.6(4) and agrees to comply with the requirements for guarantors as specified in subrule 136.7(2).



2. [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to subrule 135.3(3) and the name and address of the facility.] This guarantee satisfies 567—Chapter 136 requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

3. [Insert appropriate phrase: “On behalf of our subsidiary” (if guarantor is corporate parent of the owner or operator); “On behalf of our affiliate” (if guarantor is a related firm of the owner or operator); or “Incident to our business relationship with” (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Iowa Department of Natural Resources and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Director of the Iowa Department of Natural Resources has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Director, shall fund a standby trust fund in accordance with the provisions of rule 567—136.21(455B), in an amount not to exceed the coverage limits specified above.

In the event that the Director determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with rule 567—135.7(455B), the guarantor upon written instructions from the Director shall fund a standby trust in accordance with the provisions of rule 567—136.21(455B), in an amount not to exceed the coverage limit specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Director, shall fund a standby trust in accordance with the provisions of rule 567—136.21(455B) to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of subrules 567—136.6(2) or 136.6(3) and 136.6(4), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 567—Chapter 135 or Chapter 136.

7. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 567—Chapter 136 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

8. The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of rule 567—136.4(455B).

9. Guarantor expressly waives notice of acceptance of this guarantee by the Iowa Department of Natural Resources, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in subrule 567—136.7(3) as such regulations were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

**136.7(4)** An owner or operator who uses a guarantee to satisfy the requirements of rule 136.4(455B) must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the director under rule 136.21(455B). This standby trust fund must meet the requirements specified in rule 136.12(455B).

**567—136.8(455B) Insurance and risk retention group coverage.**

**136.8(1)** An owner or operator may satisfy the requirements of rule 136.4(455B) by obtaining liability insurance that conforms to the requirements of this rule from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

136.8(2) Each insurance policy must be amended by an endorsement worded as specified in 136.8(2) "a" "ENDORSEMENT" or evidenced by a certificate of insurance worded as specified in 136.8(2) "b" "CERTIFICATE OF INSURANCE," except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

a. ENDORSEMENT

Name: \_\_\_\_\_

Address: \_\_\_\_\_ [address of each covered location] \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Policy Number: \_\_\_\_\_

Period of Coverage: \_\_\_\_\_ [current policy period] \_\_\_\_\_

Name of [Insurer or Risk Retention Group]:

\_\_\_\_\_

\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:

\_\_\_\_\_

\_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Endorsement:

(1) This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 567—subrule 135.3(3) and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental release; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

(2) The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with numbered paragraphs “1” to “7” of this subparagraph are hereby amended to conform with numbered paragraphs “1” to “7”:

1. Bankruptcy or insolvency of the insured shall not relieve the [“Insurer” or “Group”] of its obligation under the policy to which this endorsement is attached.

2. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in rules 567—136.6(455B) to 136.11(455B).

3. Whenever requested by the Director of the Iowa Department of Natural Resources, the [“Insurer” or “Group”] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

4. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”] except for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

Insert for claims-made policies:

5. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the previous policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

6. The [“Insurer” “Group”] will notify the insured and any additional named insureds of the six-month extended reporting expiration date as provided in paragraph 136.8(2) “a”(2)“5” in any written final cancellation or nonrenewal notice in accordance with rule 567—136.18(455B).

7. Timely notice of a release and claim for coverage to the insurer by the Iowa Department of Natural Resources shall be deemed sufficient notice on behalf of the insured under the terms, conditions, and exclusions of this policy. Notice by the department does not modify or enlarge the terms, conditions and exclusions of coverage but is only intended to preserve coverage to which the insured may otherwise be entitled under the policy.

I hereby certify that the wording of this instrument is identical to the wording in 567—subrule 136.8(2) “ENDORSEMENT” and that the [“Insurer” or “Group”] is [licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

b. CERTIFICATE OF INSURANCE

Name: \_\_\_\_\_ [name of each covered location]

Address: \_\_\_\_\_ [address of each covered location]

\_\_\_\_\_  
\_\_\_\_\_

Policy Number: \_\_\_\_\_

Endorsement (if applicable): \_\_\_\_\_

Period of Coverage: \_\_\_\_\_ [current policy period]

Name of [Insurer or Risk Retention Group]:  
\_\_\_\_\_  
\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:  
\_\_\_\_\_  
\_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Certification:

(1) [Name of Insurer or Risk Retention Group], [the “Insurer” or “Group”], except for the nonpayment of premium or misrepresentation by the insured, as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 567—subrule 135.3(3) and the name and address of the facility.]

for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental release; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

(2) The [“Insurer” or “Group”] further certifies the following with respect to the insurance described in subparagraph (1):

1. Bankruptcy or insolvency of the insured shall not relieve the [“Insurer” or “Group”] of its obligations under the policy to which this certificate applies.

2. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 567—136.6(455B) to 136.17(455B).

3. Whenever requested by the Director of the Iowa Department of Natural Resources, the [“Insurer” or “Group”] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

4. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”] except for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

Insert for claims-made policies:

5. The insurance covers claims otherwise covered by the policy that are reported to the [“Insured” or “Group”] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

6. The [“Insurer” or “Group”] will notify the insured and any additional named insured of the six-month extended reporting expiration date as provided in paragraph 136.8(2) “b”(2)“5” in any written final cancellation or nonrenewal notice in accordance with rule 567—136.18(455B).

7. Timely notice of a release and claim for coverage to the insurer by the Iowa Department of Natural Resources shall be deemed sufficient notice on behalf of the insured under the terms, conditions and exclusions of this policy. Notice by the department does not modify or enlarge the terms, conditions and exclusions of coverage but is only intended to preserve coverage to which the insured may otherwise be entitled under the policy.

I hereby certify that the wording of this instrument is identical to the wording in 567—sub-rule 136.8(2) “CERTIFICATE OF INSURANCE” and that the [“Insurer” or “Group”] is [“licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states”].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

**136.8(3)** Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

### **567—136.9(455B) Surety bond.**

**136.9(1)** An owner or operator may satisfy the requirements of rule 136.4(455B) by obtaining a surety bond that conforms to the requirements of this rule. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

136.9(2) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: \_\_\_\_\_

Period of coverage: \_\_\_\_\_

Principal: \_\_\_\_\_ [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable): \_\_\_\_\_

Surety(ies): \_\_\_\_\_ [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 567—subrule 135.3(3), and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank".]

Penal sums of bond: Per occurrence \$ \_\_\_\_\_

Annual aggregate \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to The Iowa Department of Natural Resources, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully [“take corrective action, in accordance with rule 567—135.7(455B) and the Director of the Iowa Department of Natural Resources instructions for,” and/or “compensate injured third parties for bodily injury and property damage caused by” either “sudden” or “nonsudden” or “sudden and nonsudden”] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 567—Chapter 136, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- a. Any obligation of [insert owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;
- b. Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- e. Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of rule 567—136.4(455B).

The Surety(ies) shall become liable on the bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the director of the Iowa department of natural resources that the Principal has failed to [“take corrective action, in accordance with rule 567—135.7(455B) and the director’s instructions,” and/or “compensate injured third parties”] as guaranteed by this bond, the Surety(ies) shall either perform [“corrective action in accordance with 567—Chapter 135 and the director’s instructions,” and/or “third-party liability compensation”] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the director under rule 567—136.7(455B).

Upon notification by the director that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the director has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the director under rule 567—136.21(455B).

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.



The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 567—subrule 136.9(2) as such rules were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

**136.9(3)** Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety’s liability is limited to the per occurrence and annual aggregate penal sums.

**136.9(4)** The owner or operator who uses a surety bond to satisfy the requirements of rule 136.4(455B) must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under rule 136.23(455B). This standby trust fund must meet the requirements specified in rule 136.18(455B).

**567—136.10(455B) Letter of credit.**

**136.10(1)** An owner or operator may satisfy the requirements of rule 136.4(455B) by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subrule. The issuing institution must be an entity that has the authority to issue letters of credit in Iowa and whose letter-of-credit operations are regulated and examined by a federal or state agency.

**136.10(2)** The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of Director of Iowa Department of Natural Resources]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. \_\_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 567—subrule 135.3(3) and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of rule 567—136.4(455B).

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 567—subrule 136.10(2) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

**136.10(3)** An owner or operator who uses a letter of credit to satisfy the requirements of 567—subrule 135.9(4) must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under rule 136.21(455B). This standby trust fund must meet the requirements specified in rule 136.12(455B).

**136.10(4)** The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

#### **567—136.11(455B) Trust fund.**

**136.11(1)** An owner or operator may satisfy the requirements of rule 136.4(455B) by establishing a trust fund that conforms to the requirements of this rule. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

**136.11(2)** The wording of the trust agreement must be identical to the wording specified in subrule 136.12(2), “TRUST AGREEMENT,” and must be accompanied by a formal certification of acknowledgment as specified in subrule 136.12(2), “CERTIFICATION.”

**136.11(3)** The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

**136.11(4)** If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

**136.11(5)** If other financial assurances as specified in this rule are substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

**136.11(6)** Within 60 days after receiving a request from the owner or operator for release of funds as specified in 136.11(4) or 136.11(5), the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

#### **567—136.12(455B) Standby trust fund.**

**136.12(1)** An owner or operator using any one of the mechanisms authorized by rules 136.7(455B), 136.9(455B) or 136.10(455B) must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

**136.12(2)** The standby trust agreement or trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the bracket deleted:

#### TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of \_\_\_\_\_" or "a national bank"], the "Trustee."

[Whereas, the Iowa Department of Natural Resources has established certain rules applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.]

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

[Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee];

Now, therefore, the Grantor and the Trustee agree as follows:

*Section 1. Definitions.* As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

[*Section 2. Identification of the Financial Assurance Mechanism.* This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

*Section 3. Establishment of Fund.* The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Iowa Department of Natural Resources. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Director of the Iowa Department of Natural Resources. Instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Iowa Department of Natural Resources.

*Section 4. Payment for [“Corrective Action” and/or “Third-Party Liability Claims”].* The Trustee shall make payments from the Fund as the Director of the Iowa Department of Natural Resources shall direct, in writing, to provide for the payment of the costs of [insert: “Taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of rule 567—136.4(455B).

The Trustee shall reimburse the Grantor, or other persons as specified by the Director, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

*Section 5. Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

*Section 6. Trustee Management.* The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

*Section 7. Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

*Section 8. Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or saving certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

*Section 9. Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

*Section 10. Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

*Section 11. Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

*Section 12. Successor Trustee.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

*Section 13. Instructions to the Trustee.* All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director of the Iowa Department of Natural Resources to the Trustee shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

*Section 14. Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Director of the Iowa Department of Natural Resources if the Grantor ceases to exist.

*Section 15. Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Director of the Iowa Department of Natural Resources, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

*Section 16. Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Iowa Department of Natural Resources issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

*Section 17. Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the state of Iowa, or the Comptroller of the Currency in the case of National Association banks.

*Section 18. Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of the Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 567—subrule 136.12(2) “TRUST AGREEMENT” as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

Attest:

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following.

CERTIFICATION

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

**136.12(3)** The director of the Iowa department of natural resources instructs the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs of third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

**136.12(4)** An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this chapter.



**567—136.13(455B) Local government bond rating test.**

**136.13(1)** A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of rule 136.4(455B) by having a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with a Moody’s rating of Aaa, Aa, A, or Baa, or a Standard & Poor’s rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government’s bonds are rated by both Moody’s and Standard & Poor’s, the lower rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

**136.13(2)** A local government owner or operator or local government serving as a guarantor that is not a general purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of rule 136.4(455B) by having a currently outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues, and having a Moody’s rating of Aaa, Aa, A, or Baa, or a Standard & Poor’s rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody’s and Standard & Poor’s, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

**136.13(3)** The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last 12 months by Moody’s or Standard & Poor’s.

**136.13(4)** To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” and/or “nonsudden accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

| Issue Date | Maturity Date | Outstanding Amount | Bond Rating | Rating Agency                  |
|------------|---------------|--------------------|-------------|--------------------------------|
|            |               |                    |             | [Moody’s or Standard & Poor’s] |

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding general obligation bonds issued by this government that have been rated by Moody’s or Standard & Poor’s are rated as at least investment grade (Moody’s Baa or Standard & Poor’s BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 567—subrule 136.13(4) of the Iowa Administrative Code on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

**136.13(5)** To demonstrate that it meets the local government bond rating test, the chief financial officer or local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” and/or “nonsudden accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

| Issue Date | Maturity Date | Outstanding Amount | Bond Rating | Rating Agency                     |
|------------|---------------|--------------------|-------------|-----------------------------------|
|            |               |                    |             | [Moody’s or<br>Standard & Poor’s] |

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding revenue bonds issued by this government that have been rated by Moody’s or Standard & Poor’s are rated as at least investment grade (Moody’s Baa or Standard & Poor’s BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 567—subrule 136.13(5) of the Iowa Administrative Code on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

**136.13(6)** The director of the Iowa department of natural resources may require reports of financial condition at any time from the local government owner or operator, and/or local government guarantor. If the director finds, on the basis of such reports or other information, that the local government owner or operator, and/or guarantor, no longer meets the local government bond rating test requirements of this rule, the local government owner or operator must obtain alternative coverage within 30 days after notification of such a finding.

**136.13(7)** If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within 150 days of the change in status.

**567—136.14(455B) Local government financial test.**

**136.14(1)** A local government owner or operator may satisfy the requirements of rule 136.4(455B) by passing the financial test specified therein. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges.

To pass the local government financial test, the owner or operator must meet the criteria of subrules 136.14(3) and 136.14(4) based on year-end financial statements for the latest completed fiscal year.

**136.14(2)** The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

*a. Total revenues.* Total revenues consist of the sum of general fund operating and nonoperating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

*b. Total expenditures.* Total expenditures consist of the sum of general fund operating and nonoperating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

*c. Local revenues.* Local revenues consist of total revenues, as defined in paragraph 136.14(2) "a," minus the sum of all transfers from other governmental entities, including all moneys received from federal, state, or local government sources.

*d. Debt service.* Debt service consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations; includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants; and excludes payments on noninterest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

*e. Total funds.* Total funds consist of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Total funds include federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other nonsecurity assets.

*f. Population.* Population consists of the number of people in the area served by the local government.

**136.14(3)** The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

**136.14(4)** The local government owner or operator must have a letter signed by the chief financial officer worded as specified in subrule 136.14(5).

**136.14(5)** To demonstrate that it meets the financial test under subrules 136.14(2) to 136.14(4), the chief financial officer of the local government owner or operator must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 567—135.3(455B) of the Iowa Administrative Code.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard & Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard & Poor's rating of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues

- a. Revenues (dollars) \_\_\_\_\_  
 Value of revenues excludes liquidation of investments and issuance of debt.  
 Value includes all general fund operating and nonoperating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.
- b. Subtract interfund transfers (dollars) \_\_\_\_\_
- c. Total Revenues (dollars) \_\_\_\_\_

2. Total Expenditures

- a. Expenditures (dollars) \_\_\_\_\_  
 Value consists of the sum of general fund operating and nonoperating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
- b. Subtract interfund transfers (dollars) \_\_\_\_\_
- c. Total expenditures (dollars) \_\_\_\_\_

3. Local Revenues

- a. Total Revenues (from 1c) (dollars) \_\_\_\_\_
- b. Subtract total intergovernmental transfers (dollars) \_\_\_\_\_
- c. Local Revenues (dollars) \_\_\_\_\_

4. Debt Service

- a. Interest and fiscal charges (dollars) \_\_\_\_\_
- b. Add debt retirement (dollars) \_\_\_\_\_
- c. Total Debt Service (dollars) \_\_\_\_\_

5. Total Funds (dollars)

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds) \_\_\_\_\_

6. Population (persons) \_\_\_\_\_

PART II: APPLICATION OF TEST

7. Total Revenues to Population

- a. Total Revenues (from 1c) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 7a by 7b \_\_\_\_\_
- d. Subtract 417 \_\_\_\_\_
- e. Divide by 5,212 \_\_\_\_\_
- f. Multiply by 4.095 \_\_\_\_\_

8. Total Expenses to Population

- a. Total Expenditures (from 2c) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 8a by 8b \_\_\_\_\_
- d. Subtract 524 \_\_\_\_\_
- e. Divide by 5,401 \_\_\_\_\_
- f. Multiply by 4.095 \_\_\_\_\_

9. Local Revenues to Total Revenues

- a. Local Revenues (from 3c) \_\_\_\_\_
- b. Total Revenues (from 1c) \_\_\_\_\_
- c. Divide 9a by 9b \_\_\_\_\_
- d. Subtract .695 \_\_\_\_\_
- e. Divide by .205 \_\_\_\_\_
- f. Multiply by 2.840 \_\_\_\_\_

10. Debt Service to Population

- a. Debt Service (from 4c) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 10a by 10b \_\_\_\_\_
- d. Subtract 51 \_\_\_\_\_
- e. Divide by 1,038 \_\_\_\_\_
- f. Multiply by - 1.866 \_\_\_\_\_

11. Debt Service to Total Revenues

- a. Debt Service (from 4c) \_\_\_\_\_
- b. Total Revenues (from 1c) \_\_\_\_\_
- c. Divide 11a by 11b \_\_\_\_\_
- d. Subtract .068 \_\_\_\_\_
- e. Divide by .259 \_\_\_\_\_
- f. Multiply by - 3.533 \_\_\_\_\_

12. Total Revenues to Total Expenses

- a. Total Revenues (from 1c) \_\_\_\_\_
- b. Total Expenditures (from 2c) \_\_\_\_\_
- c. Divide 12a by 12b \_\_\_\_\_
- d. Subtract .910 \_\_\_\_\_
- e. Divide by .899 \_\_\_\_\_
- f. Multiply by 3.458 \_\_\_\_\_

13. Funds Balance to Total Revenues

- a. Total Funds (from 5) \_\_\_\_\_
- b. Total Revenues (from 1c) \_\_\_\_\_
- c. Divide 13a by 13b \_\_\_\_\_
- d. Subtract .891 \_\_\_\_\_
- e. Divide by 9.156 \_\_\_\_\_
- f. Multiply by 3.270 \_\_\_\_\_

14. Funds Balance to Total Expenses

- a. Total Funds (from 5) \_\_\_\_\_
- b. Total Expenditures (from 2c) \_\_\_\_\_
- c. Divide 14a by 14b \_\_\_\_\_
- d. Subtract .866 \_\_\_\_\_
- e. Divide by 6.409 \_\_\_\_\_
- f. Multiply by 3.270 \_\_\_\_\_

15. Total Funds to Population

- a. Total Funds (from 5) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 15a by 15b \_\_\_\_\_
- d. Subtract 270 \_\_\_\_\_
- e. Divide by 4,548 \_\_\_\_\_
- f. Multiply by 1.866 \_\_\_\_\_

16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937 \_\_\_\_\_

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 567—subrule 136.14(5) of the Iowa Administrative Code on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

**136.14(6)** If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

**136.14(7)** The director of the Iowa department of natural resources may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subrules 136.13(2) to 136.13(5), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

**136.14(8)** If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the director of the Iowa department of natural resources that it no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within 10 days.

### **567—136.15(455B) Local government guarantee.**

**136.15(1)** A local government owner or operator may satisfy the requirements of rule 136.4(455B) by obtaining a guarantee that conforms to the requirements of this rule. The guarantor must be either the state in which the local government owner or operator is located or a local government having a “substantial governmental relationship” with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as a guarantor must:

*a.* Demonstrate that it meets the bond rating test requirement of rule 136.13(455B) and deliver a copy of the chief financial officer’s letter as contained in subrule 136.13(4) to the local government owner or operator; or

*b.* Demonstrate that it meets the worksheet test requirements of rule 136.14(455B) and deliver a copy of the chief financial officer’s letter as contained in subrule 136.14(5) to the local government owner or operator; or

*c.* Demonstrate that it meets the local government fund requirements of subrule 136.16(1), 136.16(2), or 136.16(3) and deliver a copy of the chief financial officer’s letter as contained in rule 136.16(455B) to the local government owner or operator.

**136.15(2)** If the local government guarantor is unable to demonstrate financial assurance under rule 136.13(455B) or 136.14(455B) or subrule 136.16(1), 136.16(2), or 136.16(3) at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in subrule 136.23(3).

**136.15(3)** The guarantee agreement must be worded as specified in subrule 136.15(4) or 136.15(5), depending on which of the following alternative guarantee arrangements is selected:

*a.* If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the director of the Iowa department of natural resources, the guarantee shall be worded as specified in 136.15(4).

*b.* If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the director of the Iowa department of natural resources for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in subrule 136.15(5).



**136.15(4)** If the guarantor is a state, the local government guarantee with standby trust must be worded as specified in paragraph “a,” except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee with standby trust must be worded as specified in paragraph “b,” except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

a. Local Government Guarantee With Standby Trust Made by a State Guarantee made this [date] by [name of state], herein referred to as guarantor, to Iowa department of natural resources and to any and all third parties, and obligees, on behalf of [local government owner or operator].

#### Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 567—Chapter 135 of the Iowa Administrative Code (IAC), and the name and address of the facility.] This guarantee satisfies 567—Chapter 136 IAC requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to Iowa department of natural resources and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [director] of the Iowa department of natural resources has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the director shall fund a standby trust fund in accordance with the provisions of 567—136.21(455B) IAC, in an amount not to exceed the coverage limits specified above.

In the event that the [director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 567—Chapter 135 IAC, the guarantor upon written instructions from the director shall fund a standby trust fund in accordance with the provisions of 567—136.21(455B) IAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [director], shall fund a standby trust in accordance with the provisions of 567—136.21(455B) IAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 567—Chapter 135 or 136 IAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 567—Chapter 136 IAC for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(7) The guarantor's obligation does not apply to any of the following:

1. Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

2. Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

3. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

5. Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 567—136.4(455B) IAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Iowa department of natural resources, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 567—subrule 136.14(4) IAC on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

*b.* Local Government Guarantee With Standby Trust Made by a Local Government Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Iowa, herein referred to as guarantor, to the Iowa department of natural resources and to any and all third parties, and obligees, on behalf of [local government owner or operator].

#### Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 567—136.13(455B) of the Iowa Administrative Code (IAC), the local government financial test requirements of 567—136.14(455B) IAC, or the local government fund under 567—subrule 136.16(1), 136.16(2), or 136.16(3) IAC.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 567—135.3(455B) IAC or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 567—Chapter 136 IAC requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Iowa department of natural resources and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the director of the Iowa department of natural resources has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [director], shall fund a standby trust fund in accordance with the provisions of 567—136.21(455B) IAC, in an amount not to exceed the coverage limits specified above.

In the event that the [director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 567—Chapter 135 IAC, the guarantor, upon written instructions from the [director], shall fund a standby trust fund in accordance with the provisions of 567—136.21(455B) IAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [director], shall fund a standby trust in accordance with the provisions of 567—136.21(455B) IAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 567—Chapter 135 or 136 IAC.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 567—Chapter 136 IAC for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

1. Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
2. Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
3. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
5. Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 567—136.4(455B) IAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Iowa department of natural resources, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 567—sub-rule 136.15(4) IAC on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

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**136.15(5)** If the guarantor is a state, the local government guarantee without standby trust must be worded as specified in paragraph “a,” except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee without standby trust must be worded as specified in paragraph “b,” except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

*a.* Local Government Guarantee Without Standby Trust Made by a State Guarantee made this [date] by [name of state], herein referred to as guarantor, to the Iowa department of natural resources and to any and all third parties, and obligees, on behalf of [local government owner or operator].

#### Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 567—Chapter 135 of the Iowa Administrative Code (IAC), and the name and address of the facility.] This guarantee satisfies 567—Chapter 136 IAC requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to the department of natural resources and to any and all third parties and obligees that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the director of the Iowa department of natural resources has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the [director], shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 567—Chapter 135 IAC, the guarantor, upon written instructions from the [director], shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 567—Chapter 135 or 136 IAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 567—Chapter 136 IAC for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The guarantor’s obligation does not apply to any of the following:

1. Any obligation of [local government owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;
2. Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
3. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
5. Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 567—136.4(455B) IAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 567—subrule 136.15(5) IAC on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

*b.* Local Government Guarantee Without Standby Trust Made by a Local Government Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as guarantor, to the Iowa department of natural resources and to any and all third parties, and obligees, on behalf of [local government owner or operator].

#### Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 567—136.13(455B) of the Iowa Administrative Code (IAC), the local government financial test requirements of 567—136.14(455B) IAC, the local government fund under 567—subrule 136.16(1), 136.16(2) or 136.16(3) IAC.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 567—Chapter 135 IAC or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 567—Chapter 136 IAC requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Iowa department of natural resources and to any and all third parties and obligees that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the director of the Iowa department of natural resources has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the [director], shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 567—Chapter 135 IAC, the guarantor, upon written instructions from the [director], shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 567—Chapter 135 or 136 IAC.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 567—Chapter 136 IAC for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor’s obligation does not apply to any of the following:

1. Any obligation of [local government owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;

2. Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

3. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

5. Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 567—136.4(455B) IAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Iowa department of natural resources, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 567—subrule 136.15(5) IAC on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

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**567—136.16(455B) Local government fund.** A local government owner or operator may satisfy the requirements of rule 136.4(455B) by establishing a dedicated fund account that conforms to the requirements of this rule. Except as specified in subrule 136.16(2), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

**136.16(1)** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of coverage required under rule 136.4(455B), or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

**136.16(2)** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, and is funded for five times the full amount of coverage required under rule 136.4(455B), or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under rule 136.4(455B), the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

**136.16(3)** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully funded. This seven-year period is hereafter referred to as the “pay-in period.” The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in period; and

*a.* The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, or



b. The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

**136.16(4)** To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” and/or “non-sudden accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: “The local government fund is funded for the full amount of coverage required under 567—136.4(455B) of the Iowa Administrative Code (IAC), or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage,” or “The local government fund is funded for ten times the full amount of coverage required under 567—136.4(455B) IAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage,” or “A payment is made to the fund once every year for seven years until the fund is fully funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund” or “A payment is made to the fund once every year for seven years until the fund is fully funded and I have attached a letter signed by the state attorney general stating that (1) the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws and (2) prior voter approval is not necessary before use of the bonding authority”.]

The details of the local government fund are as follows:

Amount in fund (market value of fund at close of last fiscal year): \_\_\_\_\_

[If fund balance is incrementally funded as specified in 567—subrule 136.16(4) IAC, insert:

Amount added to fund in the most recently completed fiscal year: \_\_\_\_\_

Number of years remaining in the pay-in period: \_\_\_\_\_ ]

A copy of the state constitutional provision, or local government statute, charter, ordinance, or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in 567—subrule 136.16(4) IAC on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

**567—136.17(455B) Substitution of financial assurance mechanisms by owner or operator.**

**136.17(1)** An owner or operator may substitute any alternate financial assurance mechanisms as specified in this chapter provided that at all times an effective financial assurance mechanism or combination of mechanisms that satisfied the requirements of rule 136.4(455B) is maintained.

**136.17(2)** After obtaining alternate financial assurance as specified in this chapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

**567—136.18(455B) Cancellation or nonrenewal by a provider of financial assurance.**

**136.18(1)** Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. For claims-made policies, the notice of termination must clearly advise the insured and any named additional insureds of the effective termination date and the applicable extended reporting period under which a claim must be made to preserve coverage as provided in 136.8(2)“a”(2)“6” and 136.8(2)“b”(2)“6.” In the alternative, insertion of the following unnumbered paragraph into a notice of termination satisfies this requirement. The provider of the financial assurance must also provide a copy of the notice of termination to the underground storage tank section of the department of natural resources. Failure to notify or timely provide a copy to the department will not invalidate a provider’s action to terminate coverage or deny renewal of coverage.

**[IOWA DEPARTMENT OF NATURAL RESOURCES NOTICE  
EXTENDED COVERAGE**

Iowa department of natural resources rules require that all insured persons be afforded 180 days from the date of policy cancellation or nonrenewal to give notice of a release and make a claim for coverage under the terms and conditions of this policy. This means that, if you fail to give notice of a release and submit a claim as provided in this policy within 180 days of cancellation, you may be barred from making a claim for coverage under the terms of your policy, even if a release is later discovered and demonstrated to have occurred during the coverage period.]

*a.* Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

*b.* Termination of insurance or risk retention group coverage, except for nonpayment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

**136.18(2)** If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in rule 136.23(455B), the owner or operator must obtain alternate coverage as specified in this chapter within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the director of the Iowa department of natural resources of such failure and submit the name and address of the provider of financial assurance; the effective date of termination; and the evidence of the financial assurance mechanism subject to the termination maintained in accordance with subrule 136.20(2).

**567—136.19(455B) Reporting by owner or operator.**

**136.19(1)** An owner or operator must submit the appropriate forms listed in subrule 136.20(2) documenting current evidence of financial responsibility to the director of the Iowa department of natural resources.

*a.* Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under 567—subrule 135.6(4) or 135.7(2);

*b.* If the owner or operator fails to obtain alternate coverage as required by this chapter, within 30 days after the owner or operator receives notice of:

(1) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(2) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(3) Failure of a guarantor to meet the requirements of the financial test,

(4) Other incapacity of a provider of financial assurance; or

*c.* As required by subrules 136.6(7) and 136.18(2).

**136.19(2)** An owner or operator must certify compliance with the financial responsibility requirements of this chapter as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under 567—subrule 135.3(3).

**136.19(3)** The director may require an owner or operator to submit evidence of financial assurance as described in subrule 136.20(2) or other information relevant to compliance with this chapter at any time.

**567—136.20(455B) Record keeping.**

**136.20(1)** Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an underground storage tank until released from the requirements of this chapter under rule 136.22(455B). An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of work. Records maintained offsite must be made available upon request of the Iowa department of natural resources.

**136.20(2)** An owner or operator must maintain the following types of evidence of financial responsibility:

*a.* An owner or operator using an assurance mechanism specified in rules 136.6(455B) to 136.11(455B) or rules 136.13(455B) to 136.16(455B) must maintain a copy of the instrument worded as specified.

*b.* An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

*c.* An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

*d.* A local government owner or operator using a local government guarantee under subrule 136.15(4) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

*e.* A local government owner or operator using the local government bond rating test under rule 136.13(455B) must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

*f.* A local government owner or operator using the local government guarantee under rule 136.15(455B), where the guarantor's demonstration of financial responsibility relies on the bond rating test under rule 136.13(455B), must maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

*g.* An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

*h.* An owner or operator using a local government fund under rule 136.16(455B) must maintain the following documents:

(1) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund, and

(2) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under subrule 136.16(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

(3) If the fund is established under subrule 136.16(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under paragraph 136.16(3)"a"), or attested by the state attorney general as specified under paragraph 136.16(3)"b."

*i.* A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

*j.* An owner or operator using an assurance mechanism specified in rules 136.6(455B) through 136.16(455B) must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of 567—Chapter 136 of the Iowa Administrative Code (IAC).

The financial assurance mechanism(s) used to demonstrate financial responsibility under 567—Chapter 136 IAC is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number, if applicable, amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases".]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

**567—136.21(455B) Drawing on financial assurance mechanisms.**

**136.21(1)** The director of the department of natural resources shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

*a.* The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

The director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the director pursuant to rule 135.6(455B) or 135.7(455B) of a release from an underground storage tank covered by the mechanism; or

*b.* The conditions of paragraph 136.21(2)“a” or subparagraph 136.21(2)“b”(1) or 136.21(2)“b”(2) are satisfied.

**136.21(2)** The director of the Iowa department of natural resources may draw on a standby trust fund when:

*a.* The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under rule 567—135.8(455B); or

*b.* The director has received either:

(1) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CERTIFICATION OF VALID CLAIM**

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner’s or operator’s] underground storage tank should be paid in the amount of \$[ \_\_\_\_\_ ].

|                   |                 |
|-------------------|-----------------|
| [Signatures]      | [Signature(s)]  |
| Owner or Operator | Claimant(s)     |
| Attorney for      | Attorney(s) for |
| Owner or Operator | Claimant(s)     |

(Notary)                      Date                      (Notary)                      Date; or

(2) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter and the director determines that the owner or operator has not satisfied the judgment.

**136.21(3)** If the director of the department of natural resources determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph 136.21(2)“b” may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under subparagraph 136.21(2)“b”(1) and valid court orders under subparagraph 136.21(2)“b”(2).

**136.21(4)** A governmental entity acting as guarantor under subrule 136.15(5), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in subrule 136.21(1), 136.21(2), or 136.21(3).

**567—136.22(455B) Release from the requirements.** An owner or operator is no longer required to maintain financial responsibility under this chapter for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by rule 567—135.15(455B).

**567—136.23(455B) Bankruptcy or other incapacity of owner or operator or provider of financial assurance.**

**136.23(1)** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the director of the Iowa department of natural resources by certified mail of such commencement and submit the appropriate forms listed in subrule 136.20(2) documenting current financial responsibility.

**136.23(2)** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in rule 136.7(455B).

**136.23(3)** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the director of the Iowa department of natural resources by certified mail of such commencement and submit the appropriate forms listed in subrule 136.20(2) documenting current financial responsibility.

**136.23(4)** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in rule 136.15(455B).

**136.23(5)** An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this chapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, the owner or operator must notify the director of the Iowa department of natural resources within 10 days.

**136.23(6)** Rescinded IAB 4/17/02, effective 5/22/02.

**567—136.24(455B) Replenishment of guarantees, letters of credit, or surety bonds.**

**136.24(1)** If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

- a.* Replenish the value of financial assurance to equal the full amount of coverage required, or
- b.* Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

**136.24(2)** For purposes of this rule, the full amount of coverage required is the amount of coverage to be provided by rule 136.4(455B). If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

These rules are intended to implement Iowa Code sections 455B.424 and 455B.474.

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