

# PETROLEUM STORAGE TANKS UPGRADES AND ABATEMENT

## Footnotes

Legislative findings; legislative intent; conditions upon finding of invalidity; 89 Acts, ch 131, § 1, 2, 59

### **455G.1 Title scope.**

1. This chapter is entitled the "*Iowa Comprehensive Petroleum Underground Storage Tank Fund Act*".
2. This chapter applies to petroleum underground storage tanks for which an owner or operator is required to maintain proof of financial responsibility under federal or state law, from the effective date of the regulation of the federal environmental protection agency governing that tank, and not from the effective compliance date, unless the effective compliance date of the regulation is the effective date of the regulation. An owner or operator of a petroleum underground storage tank required by federal or state law to maintain proof of financial responsibility for that underground storage tank is subject to this chapter and chapter 424.
  - a. As of May 5, 1989, tanks excluded by the federal Resource Conservation and Recovery Act, subtitle I, included the following:
    - (1) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.
    - (2) A tank used for storing heating oil for consumptive use on the premises where stored.
    - (3) A septic tank.
    - (4) A pipeline facility, including gathering lines, regulated under any of the following:
      - (a) The federal Natural Gas Pipeline Safety Act of 1968.
      - (b) The federal Hazardous Liquid Petroleum Pipeline Safety Act of 1979.
      - (c) State laws comparable to the provisions of the law referred to in subparagraph subdivision (a) or (b).
    - (5) A surface impoundment, pit, pond, or lagoon.
    - (6) A storm water or wastewater collection system.
    - (7) A flow-through process tank.
    - (8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.
    - (9) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor to permit inspection of its entire surface.
  - b. As of May 5, 1989, tanks exempted or excluded by United States environmental protection agency financial responsibility regulations, 40 C.F.R. § 280.90, included the following:
    - (1) Underground storage tank systems not in operation on or after the applicable compliance date.

- (2) Those owned or operated by state and federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States.
- (3) Any underground storage tank system holding hazardous wastes listed or identifiable under subtitle C of the federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.
- (4) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the federal Clean Water Act.
- (5) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and reservoirs and electrical equipment tanks.
- (6) Any underground storage tank system whose capacity is one hundred ten gallons or less.
- (7) Any underground storage tank system that contains a de minimis concentration of regulated substances.
- (8) Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.
- (9) Any underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. pt. 50, appendix A.
- (10) Airport hydrant fuel distribution systems.
- (11) Underground storage tank systems with field- constructed tanks.

c. If and when federal law changes, the department of natural resources shall adopt by rule such additional requirements, exemptions, deferrals, or exclusions as required by federal law. It is expected that certain classes of tanks currently exempted or excluded by federal regulation will be regulated by the United States environmental protection agency in the future. A tank which is not required by federal law to maintain proof of financial responsibility shall not be subject to department of natural resources rules on proof of financial responsibility.

89 Acts, ch 131, § 42; 91 Acts, ch 252, §7, 8

## **Footnotes**

Exemption certificates; § 424.6

## **455G.2 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "*Aboveground petroleum storage tank*" means the same as defined in section 101.21.
2. "*Aboveground petroleum storage tank site*" means the same as "*tank site*" as defined in section 101.21, subsection 8.
3. "*Authority*" means the Iowa finance authority created in chapter 16.
4. "*Board*" means the Iowa comprehensive petroleum underground storage tank fund board.

5. "*Bond*" means a bond, note, or other obligation issued by the authority for the fund and the purposes of this chapter.
6. "*Claimant*" means an owner or operator who has received assistance under the remedial account or who had coverage under the underground storage tank insurance fund, established in section 455G.11, Code 2003, with respect to a release, or an installer or inspector who had coverage under the underground storage tank insurance fund.
7. "*Community remediation*" means a program of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or federal law.
8. "*Corrective action*" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare a site cleanup report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by a site cleanup report.
9. "*Diminution*" is the amount of petroleum which is released into the environment prior to its intended beneficial use.
10. "*Diminution rate*" is the presumed rate at which petroleum experiences diminution, and is equal to one-tenth of one percent of all petroleum deposited into a tank.
11. "*Free product*" means a regulated substance that is present as a nonaqueous phase liquid.
12. "*Fund*" means the Iowa comprehensive petroleum underground storage tank fund.
13. "*Improvement*" means the acquisition, construction, or improvement of any tank, tank system, or monitoring system in order to comply with state and federal technical requirements or to obtain insurance to satisfy financial responsibility requirements.
14. "*Insurance*" includes any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa department of natural resources' underground storage tank financial responsibility rules.
15. "*Insurance premium*" includes any form of premium or payment for insurance or for obtaining other forms of financial assurance, or showing of financial responsibility.
16. "*Petroleum*" means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).
17. "*Potentially responsible party*" means a person who may be responsible or liable for a release for which the fund has made payments for corrective action or third-party liability.
18. "*Precorrective action value*" means the purchase price of the tank site paid by the owner after October 26, 1990.

19. *"Release"* means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing from an underground storage tank into groundwater, surface water, or subsurface soils.

20. *"Small business"* means a business that meets all of the following requirements:

a. Is independently owned and operated.

b. Owns at least one, but no more than twelve tanks at no more than two different tank sites.

c. Has a net worth of four hundred thousand dollars or less.

21. *"Tank"* means an underground storage tank for which proof of financial responsibility is, or on a date definite will be, required to be maintained pursuant to the federal Resource Conservation and Recovery Act and the regulations from time to time adopted pursuant to that Act or successor Acts or amendments.

22. *"Third-party liability"* means both of the following:

a. Property damage including physical injury to tangible property, but not including loss of use, other than costs to remediate.

b. Bodily injury including sickness, bodily injury, illness, or death.

89 Acts, ch 131, §43; 90 Acts, ch 1235, § 17, 18; 91 Acts, ch 252, § 912; 98 Acts, ch 1068, §1, 2; 2001 Acts, ch 51, §4; 2004 Acts, ch 1094, §1, 6; 2005 Acts, ch 19, §59, 60

For future repeal of subsections 1 and 2 effective December 31, 2006, see 2004 Acts, ch 1094, §5

### **455G.3 Establishment of Iowa comprehensive petroleum underground storage tank fund.**

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section, section 423.43, subsection 1, paragraph "a", and sections 455G.8, 455G.9, and 455G.11, Code 2003, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

2. The board shall assist Iowa's owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The authority may issue its bonds, or series of bonds, to assist the board, as provided in this chapter.

3. The purposes of this chapter shall include but are not limited to any of the following:

a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.

b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10.

c. To establish a marketability fund for the purposes as stated in section 455G.21.

d. To establish an aboveground petroleum storage tank fund as provided in section 455G.23.

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account or fund under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

5. For purposes of payment of refunds of the environmental protection charge under section 424.15 by the department of revenue, the treasurer of state shall allocate to the department of administrative services the total amount budgeted by the fund's board for environmental protection charge refunds. Any unused funds shall be remitted to the treasurer of state.

89 Acts, ch 131, §44; 90 Acts, ch 1235, § 19; 91 Acts, ch 159, § 29; 95 Acts, ch 215, §11, 12; 98 Acts, ch 1065, §1; 98 Acts, ch 1068, §3, 4; 2000 Acts, ch 1226, §13, 30; 2001 Acts, ch 190, §21; 2002 Acts, ch 1050, §42; 2003 Acts, ch 145, §263; 2003 Acts, 1st Ex, ch 2, §198, 205; 2004 Acts, ch 1094, §2, 6; 2005 Acts, ch 19, §61, 62

## Footnotes

For temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions, see annual Acts of the general assembly

For future repeal of subsection 3, paragraph d, effective December 31, 2006, see 2004 Acts, ch 1094, §5

## 455G.4 Governing board.

1. *Members of the board.* The Iowa comprehensive petroleum underground storage tank fund board is established consisting of the following members:

a. The director of the department of natural resources, or the director's designee.

b. The treasurer of state, or the treasurer's designee.

c. The commissioner of insurance, or the commissioner's designee.

d. Two public members appointed by the governor and confirmed by the senate to staggered four-year terms, except that of the first members appointed, one public member shall be appointed for a term of two years and one for a term of four years. A public member shall have experience, knowledge, and expertise of the subject

matter embraced within this chapter. Two public members shall be appointed with experience in either, or both, financial markets or insurance.

*e.* Two owners or operators appointed by the governor. One of the owners or operators appointed pursuant to this paragraph shall have been a petroleum systems insured through the underground storage tank insurance fund as it existed on June 30, 2004, or a successor to the underground storage tank insurance fund and shall have been an insured through the insurance account of the comprehensive petroleum underground storage tank fund on or before October 26, 1990. One of the owners or operators appointed pursuant to this paragraph shall be self-insured.

*f.* The director of the legislative services agency, or the director's designee. The director under this paragraph shall not participate as a voting member of the board.

A public member appointed pursuant to paragraph "d" shall not have a conflict of interest. For purposes of this section a "*conflict of interest*" means an affiliation, within the twelve months before the member's appointment, with the regulated tank community, or with a person or property and casualty insurer offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated tank community.

The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board or made available to the fund. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The members shall elect a voting chairperson of the board from among the members of the board.

*2. Department cooperation with board.* The director of the department of natural resources shall cooperate with the board in the implementation of this part so as to minimize unnecessary duplication of effort, reporting, or paperwork and maximize environmental protection.

*3. Rules and emergency rules.*

*a.* The board shall adopt rules regarding its practice and procedures, develop underwriting standards, procedures for investigating and settling claims made against the fund, and otherwise implement and administer this chapter.

*b.* The board may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this subsection for one year after May 5, 1989.

*c.* Rules necessary for the implementation and collection of the environmental protection charge shall be adopted on or before June 1, 1989.

*d.* Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

*e.* The board shall adopt rules relating to appeal procedures which shall require the administrator to deliver notice of appeal to the affected parties within fifteen days of receipt of notice, require that the hearing be held within one hundred eighty days of the filing of the petition unless good cause is shown for the delay, and require that a final decision be issued no later than one hundred twenty days following the close of the hearing. The time restrictions in this paragraph may be waived by mutual agreement of the parties.

*4. Public bid.* All contracts entered into by the board, including contracts relating to community remediation, shall be awarded on a competitive basis to the maximum extent practical. In those situations where it is determined that public bidding is not practical, the basis for the determination of impracticability shall be

documented by the board or its designee. This subsection applies only to contracts entered into on or after July 1, 1992.

*5. Contract approval.*

a. The board shall approve any contract entered into pursuant to this chapter if the cost of the contract exceeds seventy-five thousand dollars.

b. A listing of all contracts entered into pursuant to this chapter shall be presented at each board meeting and shall be made available to the public. The listing shall state the interested parties to the contract, the amount of the contract, and the subject matter of the contract.

c. The board shall be required to review and approve or disapprove the administrator's failure to approve a contract under section 455G.12A. Review by the board shall not be required for cancellation or replacement of a contract for a site included in a community remediation project or when an emergency situation exists.

*6. Reporting.* Beginning July 2003, the board shall submit a written report quarterly to the legislative council, the chairperson and ranking member of the committee on natural resources and environment in the senate, and the chairperson and ranking member of the committee on environmental protection in the house of representatives regarding changes in the status of the program including, but not limited to, the number of open claims by claim type; the number of new claims submitted and the eligibility status of each claim; a summary of the risk classification of open claims; the status of all claims at high-risk sites including the number of corrective action design reports submitted, approved, and implemented during the reporting period; total moneys reserved on open claims and total moneys paid on open claims; and a summary of budgets approved and invoices paid for high-risk site activities including a breakdown by corrective action design report, construction and equipment, implementation, operation and maintenance, monitoring, over excavation, free product recovery, site reclassification, reporting and other expenses, or a similar breakdown. In each report submitted by the board, the board shall include an estimated timeline to complete corrective action at all currently eligible high-risk sites where a corrective action design report has been submitted by a claimant and approved during the reporting period. The timeline shall include the projected year when a no further action designation will be obtained based upon the corrective action activities approved or anticipated at each claimant site. The timeline shall be broken down in annual increments with the number or percentage of sites projected to be completed for each time period. The report shall identify and report steps taken to expedite corrective action and eliminate the state's liability for open claims.

89 Acts, ch 131, § 45; 91 Acts, ch 252, § 13; 92 Acts, ch 1217, § 3, 4; 93 Acts, ch 155, §1; 98 Acts, ch 1068, §5; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 110, §24; 2005 Acts, ch 19, §6365

**455G.5 Independent contractors to be retained by board.**

The board shall administer the fund. A contract entered into on or after July 1, 1992, to retain a person to act as the administrator of the fund shall be subject to public bid. All other contracts to retain a person under this section shall be in compliance with the public bidding requirements of section 455G.4, subsection 4.

The board may enter into a contract or an agreement authorized under chapter 28E with a private agency or person, the department of natural resources, the Iowa finance authority, the department of administrative services, the department of revenue, other departments, agencies, or governmental subdivisions of this state, another state, or the United States, in connection with its administration and implementation of this chapter or chapter 424 or 455B.

The board may reimburse a contractor, public or private, retained pursuant to this section for expenses incurred in the execution of a contract or agreement. Reimbursable expenses include, by way of example, but not exclusion, the costs of collecting the environmental protection charge or administering specific delegated

duties or powers of the board.

89 Acts, ch 131, § 46; 92 Acts, ch 1217, § 5; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §65

#### **455G.6 Iowa comprehensive petroleum underground storage tank fund general and specific powers.**

In administering the fund, the board has all of the general powers reasonably necessary and convenient to carry out its purposes and duties and may do any of the following, subject to express limitations contained in this chapter:

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board may take any action which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.
2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used.
3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more improvements under the terms it determines.
4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including revenues derived from the use tax under section 423.43, subsection 1, paragraph "a", and deposited in the fund or an account of the fund.
5. Provide that the interest on bonds may vary in accordance with a base or formula.
6. Contract for the acquisition, construction, or both of one or more improvements or parts of one or more improvements and for the leasing, subleasing, sale, or other disposition of one or more improvements in a manner it determines.
7. The board may contract with the authority for the authority to issue bonds and do all things necessary with respect to the purposes of the fund, as set out in the contract between the board and the authority. The board may delegate to the authority and the authority shall then have all of the powers of the board which are necessary to issue and secure bonds and carry out the purposes of the fund, to the extent provided in the contract between the board and the authority. The authority may issue the authority's bonds in principal amounts which, in the opinion of the board, are necessary to provide sufficient funds for the fund, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the authority incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the board necessary or convenient to administer the fund. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code, chapter 554.
8. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the board to the payment thereof, and are not an indebtedness of this state or the authority, or a charge against the general credit or general fund of the state or the authority, and the state shall not be liable for any financial undertakings with respect to the fund. Bonds issued under this chapter shall contain on their face a statement that the bonds do not constitute an indebtedness of the state or the authority.
9. The proceeds of bonds issued by the authority and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested in any investment approved by the authority and specified in the trust indenture, resolution, or other instrument pursuant to

which the bonds are issued without regard to any limitation otherwise provided by law.

10. The bonds shall be:

*a.* In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

*b.* Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the authority. Chapters 73A, 74, 74A and 75 do not apply to their sale or issuance of the bonds.

*c.* Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

11. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

12. Bonds must be authorized by a trust indenture, resolution, or other instrument of the authority, approved by the board. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

13. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code, chapter 554, to be valid, binding, or effective.

14. Bonds issued under the provisions of this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this chapter shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

15. *a.* Subject to the terms of any bond documents, moneys in the fund or fund accounts may be expended for administration expenses, civil penalties, moneys paid under an agreement, stipulation, or settlement, for the costs associated with sites within a community remediation project, for costs related to contracts entered into with a state agency or university, costs for activities relating to litigation, or for the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter. For purposes of this chapter, administration expenses include expenses incurred by the underground storage tank section of the department of natural resources in relation to tanks regulated under this chapter.

*b.* The authority granted under this subsection which allows the board to expend fund moneys on an activity the board determines is necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter, shall only be used in accordance with the following:

(1) Prior board approval shall be required before expenditure of moneys pursuant to this authority shall be made.

(2) If the expenditure of fund moneys pursuant to this authority would result in the board establishing a

policy which would substantially affect the operation of the program, rules shall be adopted pursuant to chapter 17A prior to the board or the administrator taking any action pursuant to this proposed policy.

16. The board shall cooperate with the department of natural resources in the implementation and administration of this chapter to assure that in combination with existing state statutes and rules governing underground storage tanks, the state will be, and continue to be, recognized by the federal government as having an "*approved state account*" under the federal Resource Conservation and Recovery Act, especially by compliance with the Act's subtitle I financial responsibility requirements as enacted in the federal Superfund Amendments and Reauthorization Act of 1986 and the financial responsibility regulations adopted by the United States environmental protection agency at 40 C.F.R. pts. 280 and 281. Whenever possible this chapter shall be interpreted to further the purposes of, and to comply, and not to conflict, with such federal requirements.

17. The board may adopt rules pursuant to chapter 17A providing for the transfer of all or a portion of the liabilities of the board under this chapter. Notwithstanding other provisions to the contrary, the board, upon such transfer, shall not maintain any duty to reimburse claimants under this chapter for those liabilities transferred.

89 Acts, ch 131, § 47; 90 Acts, ch 1235, § 20; 92 Acts, ch 1018, § 1; 92 Acts, ch 1217, § 6; 95 Acts, ch 215, §13; 98 Acts, ch 1065, §2; 2000 Acts, ch 1226, §14, 30; 2003 Acts, ch 44, §114; 2003 Acts, ch 110, §5; 2003 Acts, 1st Ex, ch 2, §199, 205

Section repealed effective July 1, 2009; exception for outstanding bonds; 89 Acts, ch 131, § 63

#### **455G.7 Security for bonds capital reserve fund irrevocable contracts.**

1. For the purpose of securing one or more issues of bonds for the fund, the authority, with the approval of the board, may authorize the establishment of one or more special funds, called "*capital reserve funds*". The authority may pay into the capital reserve funds the proceeds of the sale of its bonds and other money which may be made available to the authority from other sources for the purposes of the capital reserve funds. Except as provided in this section, money in a capital reserve fund shall be used only as required for any of the following:

- a. The payment of the principal of and interest on bonds or of the sinking fund payments with respect to those bonds.
- b. The purchase or redemption of the bonds.
- c. The payment of a redemption premium required to be paid when the bonds are redeemed before maturity.

However, money in a capital reserve fund shall not be withdrawn if the withdrawal would reduce the amount in the capital reserve fund to less than the capital reserve fund requirement, except for the purpose of making payment, when due, of principal, interest, redemption premiums on the bonds, and making sinking fund payments when other money pledged to the payment of the bonds is not available for the payments. Income or interest earned by, or increment to, a capital reserve fund from the investment of all or part of the capital reserve fund may be transferred by the authority to other accounts of the fund if the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

2. If the authority decides to issue bonds secured by a capital reserve fund, the bonds shall not be issued if the amount in the capital reserve fund is less than the capital reserve fund requirement, unless at the time of issuance of the bonds the authority deposits in the capital reserve fund from the proceeds of the bonds to be issued or from other sources, an amount which, together with the amount then in the capital reserve fund, is not less than the capital reserve fund requirement.

3. In computing the amount of a capital reserve fund for the purpose of this section, securities in which all or a portion of the capital reserve fund is invested shall be valued by a reasonable method established by the authority. Valuation shall include the amount of interest earned or accrued as of the date of valuation.

4. In this section, "*capital reserve fund requirement*" means the amount required to be on deposit in the capital reserve fund as of the date of computation.

5. To assure maintenance of the capital reserve funds, the authority shall, on or before July 1 of each calendar year, make and deliver to the governor the authority's certificate stating the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited in the applicable capital reserve fund.

6. All amounts paid by the state pursuant to this section shall be considered advances by the state and, subject to the rights of the holders of any bonds of the authority that have previously been issued or will be issued, shall be repaid to the state without interest from all available revenues of the fund in excess of amounts required for the payment of bonds of the authority, the capital reserve fund, and operating expenses.

7. If any amount deposited in a capital reserve fund is withdrawn for payment of principal, premium, or interest on the bonds or sinking fund payments with respect to bonds thus reducing the amount of that fund to less than the capital reserve fund requirement, the authority shall immediately notify the governor and the general assembly of this event and shall take steps to restore the capital reserve fund to the capital reserve fund requirement for that fund from any amounts designated as being available for such purpose.

89 Acts, ch 131, §48

Section repealed effective July 1, 2009; exception for outstanding bonds; 89 Acts, ch 131, § 63

#### **455G.8 Revenue sources for fund.**

Revenue for the fund shall include, but is not limited to, the following, which shall be deposited with the board or its designee as provided by any bond or security documents and credited to the fund:

1. *Bonds issued to capitalize fund.* The proceeds of bonds issued to capitalize and pay the costs of the fund, and investment earnings on the proceeds except as required for the capital reserve funds.

2. *Use tax.* The revenues derived from the use tax imposed under chapter 423, subchapter III. The proceeds of the use tax under section 423.43, subsection 1, paragraph "a", shall be allocated, consistent with this chapter, among the fund's accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or authority under direction of the board.

3. *Storage tank management fee.* That portion of the storage tank management fee proceeds which are deposited into the fund, pursuant to section 455B.479.

4. *Cost recovery enforcement.* Cost recovery enforcement net proceeds as provided by section 455G.13 shall be allocated to the innocent landowners fund created under section 455G.21, subsection 2, paragraph "a". When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

5. *Other sources.* Interest attributable to investment of money in the fund or an account of the fund. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

89 Acts, ch 131, §49; 90 Acts, ch 1235, § 21; 95 Acts, ch 215, §14, 15; 98 Acts, ch 1068, §6; 99 Acts, ch 114, §31; 2003 Acts, 1st Ex, ch 2, §200, 205

#### **455G.9 Remedial program.**

1. *Limits of remedial account coverage.* Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1984, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

(b) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after January 1, 1985.

(d) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to September 1, 1990.

(e) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

(5) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph "f", subparagraph (9). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

(6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph "f", but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph "a".

*b.* Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

*c.* Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

*d.* One hundred percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

*e.* Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990, in connection with a tank owned or operated by a state agency or department which elects to participate in the remedial account pursuant to this paragraph. A state agency or department which does not receive a standing unlimited appropriation which may be used to pay for the costs of a corrective action may opt, with the approval of the board, to participate in the remedial account. As a condition of opting to participate in the remedial account, the agency or department shall pay all registration fees, storage tank management fees, environmental protection charges, and all other charges and fees upon all tanks owned or operated by the agency or department in the same manner as if the agency or department were a person required to maintain financial responsibility. Once an agency has opted to participate in the remedial program, it cannot opt out, and shall continue to pay all charges and fees upon all tanks owned or operated by the agency or department so long as the charges or fees are imposed on similarly situated tanks of a person required to maintain financial responsibility. The board shall by rule adopted pursuant to chapter 17A provide the terms and conditions for a state agency or department to opt to participate in the remedial account. A state agency or department which opts to participate in the remedial account shall be subject to the minimum copayment schedule of subsection 4, as if the state agency or department were a person required to maintain financial responsibility.

*f.* One hundred percent of the costs up to twenty thousand dollars incurred by the board under section 455G.12A, subsection 2, unnumbered paragraph 2, for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments under subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

*g.* Corrective action for the costs of a release under all of the following conditions:

(1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since December 31, 1975.

(3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(4) The release was reported to the board by October 26, 1991.

Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

*h.* One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

*i.* Notwithstanding section 455G.1, subsection 2, corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no-further-action letter by the department of natural

resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property and the applicant must not be a financial institution.

*j.* One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was acquired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which it acquired, and does not become a responsible party by sale or transfer of property so acquired.

*k.* Corrective action in response to a high risk condition caused by a release from an underground storage tank located on a site for which the department, after January 31, 1997, has issued a no further action certificate under section 455B.474. As a condition of receiving benefits under this paragraph, the department must determine that the condition necessitating the corrective action was not a result of a release that occurred after the issuance of the no further action certificate, and that the site qualified for remedial benefits under this section prior to the issuance of the no further action certificate. No more than one hundred thousand dollars per site may be used for the costs of a corrective action under this paragraph. This paragraph does not confer a legal right on an owner or operator of petroleum-contaminated property or on any other person to receive benefits under this paragraph.

*l.* Costs for the permanent closure of an underground storage tank system that was in place on the date an eligible claim was submitted under paragraph "a". Reimbursement is limited to costs approved by the board prior to the closure activities and the closure activities must be completed not later than December 31, 2005.

*2. Remedial account funding.* The remedial account shall be funded by that portion of the proceeds of the use tax imposed under chapter 423, subchapter III, and other moneys and revenues budgeted to the remedial account by the board.

*3. Trust fund to be established.* When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose.

*4. Minimum copayment schedule.* An owner or operator shall be required to pay the greater of five thousand dollars or eighteen percent of the first eighty thousand dollars of the total costs of corrective action for that release.

If a site's actual expenses exceed eighty thousand dollars, the remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, not to exceed one million dollars, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

*5. Recovery of gain on sale of property.* If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial

account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. *Recurring releases treated as a newly reported release.* A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the site cleanup report or in addition to the work actually performed.

7. *Expenses of cleanup not required.* When an owner or operator who is eligible for benefits under this chapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup.

8. *Owner or operator defined.* For purposes of receiving benefits under this section, "owner or operator" means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

9. *Self-insureds.* For a self-insured as determined under 567 IAC 136.6(455B), to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met.

10. *Expenses incurred by governmental subdivisions.* The board may adopt rules for reimbursement for reasonable expenses incurred by a governmental subdivision for treating, handling, or disposing, as required by the department, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance, or repair of a public improvement. The board may seek full recovery from a responsible party liable for the release for such expenses and for all other costs and reasonable attorney fees and costs of litigation for which moneys are expended by the fund. Any expense described in this subsection incurred by the fund constitutes a lien upon the property from which the release occurred. A lien shall be recorded and an expense shall be collected in the same manner as provided in section 424.11.

89 Acts, ch 131, § 50; 89 Acts, ch 307, § 46; 90 Acts, ch 1235, § 2228; 90 Acts, ch 1267, § 4244; 91 Acts, ch 252, § 1424; 92 Acts, ch 1217, § 7; 93 Acts, ch 155, §24; 95 Acts, ch 215, §16, 17; 98 Acts, ch 1065, §35; 99 Acts, ch 74, §1, 2; 2000 Acts, ch 1226, §15, 30; 2003 Acts, 1st Ex, ch 2, §201, 205; 2004 Acts, ch 1094, §3, 6

For future repeal of subsection 1, paragraph l effective December 31, 2006, see 2004 Acts, ch 1094, §5

**455G.10 Loan guarantee account.** Repealed by 89 Acts, ch 131, § 62.

**455G.11 Insurance fund.** Repealed by 89 Acts, ch 131, § 61.

Section repeal does not terminate obligations or authority necessary to pay claims filed prior to July 1, 2004, against the insurance fund until funds are exhausted or for the resolution of a cost recovery action filed prior to July 1, 2004; see § 455G.11(9), Code 2003, and 89 Acts, ch 131, §61

**455G.12 Board authority for prioritization.**

If the board determines that, within the realm of sound business judgment and practice, prioritization of assistance is necessary in light of funds available for loan guarantees or insurance coverage, the board may develop rules for assistance or coverage prioritization based upon adherence or planned adherence of the owner or operator to higher than minimum environmental protection and safety compliance considerations.

Prior to the adoption of prioritization rules, the board shall at minimum review the following issues:

1. The positive environmental impact of assistance prioritization.
2. The economic feasibility, including the availability of private financing, for an owner or operator to obtain priority status.
3. Any negative impact on Iowa's rural petroleum distribution network which could result from prioritization.
4. Any similar prioritization systems in use by the private financing or insurance markets in this state, including terms, conditions, or exclusions.
5. The intent of this chapter that the board shall maximize the availability of reasonably priced, financially sound insurance coverage or loan guarantee assistance.

89 Acts, ch 131, §53

**455G.12A Cost containment authority.**

1. *Validity of contracts.* A contract in which one of the parties to the contract is an owner or operator of a petroleum underground storage tank, for goods or services which may be payable or reimbursable from the fund, is invalid unless and until the administrator has approved the contract as fair and equitable to the tank owner or operator, and found that the contract terms are within the range of usual and customary rates for similar or equivalent goods or services within the state, and found that the goods or services are necessary for the owner or operator to comply with fund or regulatory standards. An owner or operator may appoint the administrator as an agent for the purposes of negotiating contracts with suppliers of goods or services compensable by the fund. The administrator may select another contractor for goods or services other than the one offered by the owner or operator, if the scope of the proposed work or actual work of the offered contractor does not reflect the quality of workmanship required, or the costs are determined to be excessive.

2. *Contract approval.* In the course of review and approval of a contract pursuant to this section, the administrator may require an owner or operator to obtain and submit three bids, provided that the administrator coordinates bid submission with the department. The administrator may require specific terms and conditions in a contract subject to approval.

The board shall have authority to contract for site cleanup reports. The board's responsibility for site cleanup reports is limited to those site cleanup reports subject to approval by the department of natural resources and required in connection with the remediation of a release which is eligible for benefits under section 455G.9.

The site cleanup report shall address existing and available remedial technologies and the costs associated with the use of each technology. The board shall not have the authority to affect a contract which has been given written approval under this section.

3. *Exclusive contracts.* The administrator may enter into a contract or an exclusive contract with the supplier of goods or services required by a class of tank owners or operators in connection with an expense payable or reimbursable from the fund, to supply a specified good or service for a gross maximum price, fixed rate, on an exclusive basis, or subject to another contract term or condition reasonably calculated to obtain goods or services for the fund or for tank owners and operators at a reasonable cost. A contract may provide for direct payment from the fund to a supplier.

The administrator may retain, subject to board approval, an independent person to assist in the review of work required in connection with a release or tank system for which fund benefits are sought, and to establish prevailing cost of goods and services needed. Nothing in this section is intended to preempt the regulatory authority of the department.

4. *Prior approval by administrator.* Unless emergency conditions exist, a contractor performing services pursuant to this section shall have the budget for the work approved by the administrator prior to commencement of the work. No expense incurred which is above the budgeted amount shall be paid unless the administrator approves such expense prior to its being incurred. All invoices or bills shall be submitted with appropriate documentation as deemed necessary by the board, no later than thirty days after the work has been performed. Neither the board nor an owner or operator is responsible for payment for work incurred which has not been previously approved by the board.

90 Acts, ch 1235, § 40; 91 Acts, ch 252, §31, 32

#### **455G.13 Cost recovery enforcement.**

1. *Full recovery sought from owner.* The board shall seek full recovery from the owner, operator, or other potentially responsible party liable for the released petroleum which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs, including reasonable attorney fees and costs of litigation for which moneys are expended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

2. *Limitation of liability of owner or operator.* Except as provided in subsection 3:

a. The board or the department of natural resources shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the remedial account except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department of natural resources to impose or collect civil or administrative fines or penalties or fees. The remedial account shall not be held liable for any third-party liability.

b. An owner or operator's liability for a release for which coverage is admitted under the underground storage tank insurance fund established in section 455G.11, Code 2003, shall not exceed the amount of the deductible.

3. *Owner or operator not in compliance, subject to full and total cost recovery.* Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in subsection 1, if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department of natural resources or with this chapter and rules adopted under this chapter.

4. *Treble damages for certain violations.* Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:

a. Failed, without sufficient cause, to respond to a release of petroleum from the tank upon, or in accordance with, a notice issued by the director of the department of natural resources.

b. After May 5, 1989, failed to perform any of the following:

(1) Failed to register the tank, which was known to exist or reasonably should have been known to exist.

(2) Intentionally failed to report a known release.

The punitive damages imposed under this subsection are in addition to any costs or expenditures recovered from the owner or operator pursuant to this chapter and in addition to any other penalty or relief provided by this chapter or any other law.

However, the state, a city, county, or other political subdivision shall not be liable for punitive damages.

5. *Lien on tank site.* Any amount for which an owner or operator is liable to the fund, if not paid when due, by statute, rule, or contract, or determination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11.

6. *Joinder of parties.* The department of natural resources has standing in any case or contested action related to the fund or a tank to assert any claim that the department may have regarding the tank at issue in the case or contested action, upon motion and sufficient showing by a party to a cost recovery or subrogation action provided for under this section, the court or the administrative law judge shall join to the action any potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section.

7. *Strict liability.* The standard of liability for a release of petroleum or other regulated substance as defined in section 455B.471 is strict liability.

8. *Third-party contracts not binding on board, proceedings against responsible party.* An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the remedial account for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable. Any such provision is null and void and of no force or effect.

9. *Later proceedings permitted against other parties.* The entry of judgment against a party to the action does not bar a future action by the board or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Notwithstanding section 668.5 no other potentially responsible party may seek contribution or any other recovery from an owner or operator eligible for assistance under the remedial account for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable. Subsequent

successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

10. *Claims against potentially responsible parties.* Upon payment by the fund for corrective action or third-party liability pursuant to this chapter, the rights of the claimant to recover payment from any potentially responsible party, are assumed by the board to the extent paid by the fund. A claimant is precluded from receiving double compensation for the same injury.

In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

A claimant may elect to permit the board to pursue the claimant's cause of action for any injury not compensated by the fund against any potentially responsible party, provided the attorney general determines such representation would not be a conflict of interest. If a claimant so elects, the board's litigation expenses shall be shared on a pro rata basis with the claimant, but the claimant's share of litigation expenses is payable exclusively from any share of the settlement or judgment payable to the claimant.

11. *Exclusion of punitive damages.* The fund shall not be liable in any case for punitive damages.

12. *Recovery or subrogation installers and inspectors.* Notwithstanding any other provision contained in this chapter, the board or a person insured under the underground storage tank insurance fund established in section 455G.11, Code 2003, has no right of recovery or right of subrogation against an installer or an inspector who was insured by the underground storage tank insurance fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

89 Acts, ch 131, §54; 91 Acts, ch 252, §3336; 98 Acts, ch 1068, §12, 13; 99 Acts, ch 114, §36; 2005 Acts, ch 19, §66, 67

#### **455G.14 Fund not subject to regulation.**

The fund is not subject to regulation under chapter 502 or Title XIII, subtitle 1.

89 Acts, ch 131, §55; 98 Acts, ch 1068, §14; 2005 Acts, ch 19, §68

#### **455G.15 Fund not part of the Iowa insurance guaranty association.**

Notwithstanding any other provisions of law to the contrary, the fund shall not be considered an insurance company or insurer under the laws of this state and shall not be a member of nor be entitled to claim against the Iowa insurance guaranty association created under chapter 515B.

89 Acts, ch 131, §56

#### **455G.16 Financial institution participation in fund.**

The board may impose conditions on the participation of a financial institution in the fund. Conditions shall be reasonably intended to increase the quantity of private capital available for loans to tank owners or operators who are small businesses within the meaning of section 455G.2. Additionally, the board may offer incentives to financial institutions meeting conditions imposed by the board. Incentives may include extended fund coverage of corrective action or third-party liability expenses, waiver of copayment or deductible

requirements, or other benefits not offered to other participants, if reasonably intended to increase the quantity of private capital available for loans by an amount greater than the increased costs of the incentives to the fund.

Third-party liability expenses under this section specifically exclude any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

89 Acts, ch 131, §57; 91 Acts, ch 252, §37

#### **455G.17 Inspectors education registration.**

1. The board shall adopt certification procedures and standards for the following classes of persons as underground storage tank installation inspectors:

*a.* A licensed engineer, except that if underground storage tank installation is within the scope of practice of a particular class of licensed engineer, additional training shall not be required for that class. A licensed engineer for whom underground storage tank installation is within the scope of practice shall be an "*authorized inspector*", rather than a "*certified inspector*".

*b.* A fire marshal, or other person unaffiliated with the tank owner, operator, or installer.

2. The board shall adopt approved curriculum for training both engineers and fire marshals or other unaffiliated persons as a precondition to their certification as underground storage tank installation inspectors.

3. The board shall adopt approved curricula for training persons to install underground storage tanks and provide fire safety and environmental protection guidelines for persons removing tanks.

4. The board shall require by rule that all certified or authorized underground storage tank inspectors register with the board and that all persons trained to perform or performing certified tank installations register with the board. A person's failure to register shall not affect the person's certification, or the certification of an otherwise eligible installation performed by that person, but rules may provide for a civil penalty of no more than fifty dollars. The board may provide a list of registrants to any interested person. The board may impose a fee for registration to recover the costs of administering the registration account.

89 Acts, ch 131, §58; 90 Acts, ch 1235, § 41; 91 Acts, ch 252, §38, 39; 2005 Acts, ch 19, §69

#### **455G.18 Groundwater professionals certification.**

1. The department of natural resources shall adopt rules pursuant to chapter 17A requiring the certification of groundwater professionals. The rules shall include provisions for suspension or revocation of certification for good cause.

2. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

*a.* A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.

*b.* A professional engineer registered in Iowa.

c. A professional geologist certified by a national organization.

d. Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences.

e. Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(1) Possession of a bachelor's degree from an accredited college.

(2) Five years of related professional experience.

3. The department of natural resources may provide for a civil penalty of no more than fifty dollars for failure to obtain certification. An interested person may obtain a list of certified groundwater professionals from the department of natural resources. The department of natural resources may impose a fee for the certification of persons under this section.

4. The certification of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of groundwater professionals certified pursuant to this section.

5. Any person who was not previously registered as a groundwater professional who requests certification under this section, after January 1, 1996, shall be required to attend a course of instruction and pass a certification examination. The administrator of the fund shall hold certification courses and offer examinations. An applicant who successfully passes the examination shall be certified as a groundwater professional.

6. A groundwater professional who was registered prior to January 1, 1996, shall not be required to attend the course of instruction but shall be required to pass the certification examination by January 1, 1997.

7. All groundwater professionals shall be required to complete continuing education requirements as adopted by rule by the department.

8. The board may provide for exemption from the certification requirements of this section for a professional engineer registered pursuant to chapter 542B, if the person is qualified in the field of geotechnical, hydrological, environmental groundwater, or hydrogeological engineering.

9. Notwithstanding the certification requirements of this section, a site cleanup report or corrective action design report submitted by a registered groundwater professional shall be accepted by the department in accordance with section 455B.474, subsection 1, paragraph "d", subparagraph (2), subparagraph subdivision (e), and paragraph "f", subparagraph (5).

91 Acts, ch 252, §40; 93 Acts, ch 155, §10; 95 Acts, ch 215, §27; 97 Acts, ch 31, §1

**455G.19 Environmental damage offset.** Repealed by 95 Acts, ch 215, §29.

**455G.20 Final approval.**

Notwithstanding any other provision to the contrary, the department of natural resources shall have final approval for a determination as to when remediation shall begin on a site.

92 Acts, ch 1217, § 9

### **455G.21 Marketability fund.**

1. A marketability fund is created as a separate fund in the state treasury under the control of the board. The board shall administer the marketability fund. Notwithstanding section 8.33, moneys remaining in the marketability fund at the end of each fiscal year shall not revert to the general fund but shall remain in the marketability fund. The marketability fund shall include, notwithstanding section 12C.7, interest earned by the marketability fund or other income specifically allocated to the marketability fund.

2. The marketability fund shall be used for the following purposes:

*a.* The innocent landowners fund shall be established as a separate fund in the state treasury under the control of the board. The innocent landowners fund shall include any moneys recovered pursuant to cost recovery enforcement under section 455G.13. Notwithstanding section 455G.1, subsection 2, benefits for the costs of corrective action may be provided to the owner of a petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, who is not otherwise eligible to receive benefits under section 455G.9 due to the date on which the release causing the contamination was reported or the date the claim was filed. An owner of a petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, shall be eligible for payment of corrective action costs subject to copayment requirements under section 455G.9, subsection 4. The board may adopt rules conditioning receipt of benefits under this paragraph to those petroleum-contaminated properties which present a higher degree of risk to the public health and safety or the environment and may adopt rules providing for denial of benefits under this paragraph to a person who did not make a good faith attempt to comply with the provisions of this chapter. This paragraph does not confer a legal right to an owner of petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, for receipt of benefits under this paragraph.

*b.* The remainder of the moneys shall be used for payment of remedial benefits as provided in section 455G.9.

3. Moneys in the fund shall not be used for purposes of bonding or providing security for bonding under chapter 455G.

95 Acts, ch 215, §28, 34; 96 Acts, ch 1034, §69, 71; 98 Acts, ch 1065, §6; 99 Acts, ch 114, §37, 38; 2001 Acts, ch 51, §3

**455G.22 No further action fund.** Repealed by 2000 Acts, ch 1226, § 21, 30.

### **455G.23 Aboveground petroleum storage tank fund.**

1. An aboveground petroleum storage tank fund is created as a separate fund in the state treasury under the control of the board. The board shall administer the aboveground petroleum storage tank fund. Notwithstanding section 8.33, moneys remaining in the aboveground petroleum storage tank fund at the end of each fiscal year shall not revert to the general fund but shall remain in the aboveground petroleum storage tank fund. The aboveground petroleum storage tank fund shall include, notwithstanding section 12C.7, interest earned by the aboveground petroleum storage tank fund or other income specifically allocated to the aboveground petroleum storage tank fund.

2. The board may reimburse the owner of an aboveground petroleum storage tank site up to twenty-five thousand dollars per site, but not more than a total of one hundred thousand dollars per owner, for the upgrade or permanent closure of the aboveground petroleum storage tank site provided all of the following criteria are met:

*a.* By January 1, 2004, the aboveground petroleum storage tank site was registered with the state fire marshal

pursuant to section 101.22.

*b.* The aboveground petroleum storage tank contains petroleum as defined in section 455B.471.

*c.* Not later than February 18, 2005, the owner shall submit an application for reimbursement, on a form provided by the board.

*d.* Upgrade expenses must be incurred after January 1, 2004, and not later than December 31, 2005. Upgrade activities are limited to the installation or improvement of equipment or systems required to comply with 40 C.F.R. § 112, specifically:

(1) Secondary containment.

(2) Corrosion protection.

(3) Loss prevention.

(4) Security.

(5) Drainage.

(6) Removal of noncompliant tanks.

*e.* Permanent closure activities, including tank system removal, decommission, and disposal, must occur after January 1, 2004, and not later than December 31, 2005, unless the owner is a party to an agreement entered into pursuant to subsection 3 and the tanks meet one of the following criteria:

(1) All tanks are empty by December 31, 2005.

(2) All tanks containing petroleum on or after December 31, 2005, meet the requirements of 40 C.F.R. § 112 et seq. and any applicable provisions of chapter 101 and the administrative rules adopted pursuant to chapter 101.

3. The board, or a contractor approved under subsection 6, may enter into contracts with qualified businesses to provide permanent closure services at eligible aboveground petroleum storage tank sites. The board or a contractor may limit reimbursement to those activities approved under the terms of the contracts. The board or a contractor may allow permanent closure activities to occur and be reimbursed after February 18, 2005, at those tank sites where the owner timely applied for reimbursement and agreed to allow the board or a contractor to complete the permanent closure at a time determined to be convenient to the board. All activities conducted under this subsection must be completed by December 31, 2006.

4. The board may enter into an agreement authorized under chapter 28E with the state fire marshal for the development and maintenance of a database to track registration, technical information, and other information determined necessary to evaluate the operation and safety of aboveground petroleum storage tank sites in Iowa.

5. The board may limit reimbursement to those activities that receive prior budget approval from the board.

6. The board may enter into a contract with a qualified business to provide for administration of this section.

7. This section is repealed December 31, 2006.

2004 Acts, ch 1094, §4, 6; 2005 Acts, ch 12, §1

## **Footnotes**

"Aboveground petroleum storage tank" and "aboveground petroleum storage tank site" defined, see §455G.2