CHAPTER 11
CLAIMS

591—11.1(455G) Reserving and payment of claims pursuant to Iowa Code sections 455G.9 and 455G.21.

11.1(1) All claims shall be investigated and overall fund liability estimated. Claims shall be reserved for their estimated exposure to the fund on the specific site. The reserve shall reflect the estimated exposure less copayment or deductible obligations.

11.1(2) Reserves shall reflect estimated total cost to the program, regardless of actual funding provided.

11.1(3) Prioritization pursuant to Iowa Code section 455G.12 shall be accomplished with rules if required and as determined by the board.

11.1(4) An estimated reserve for incurred but not reported claims shall be developed.

11.1(5) Reserves may be changed to reflect changing knowledge on eligible claims.

11.1(6) Owner or operator compliance with regulatory and program requirements shall be evaluated as part of the investigation. Failure to meet regulatory and program requirements which exist at the time of payment may result in cost recovery claims as provided under Iowa Code section 455G.13.

11.1(7) Cause of loss and determination of responsible parties shall be ascertained as a part of the investigation process. Independent environmental consultants may be retained to assist in the determination of the cause of the release and for the application of coverage.

591—11.2(455G) Eligible claims. All claims eligible for benefits under Iowa Code sections 455G.9 and 455G.21 will be subject to available funding. In order to be eligible for reimbursement under any claim type, the claimant must prove either that the release was reported by October 26, 1990, or that the release occurred prior to October 26, 1990. Releases that cannot be proven to have occurred prior to October 26, 1990, must be addressed using the owners' or operators' chosen financial responsibility mechanism. Failure to carry an adequate financial responsibility mechanism, such as continuous insurance, is deemed to be self-insurance. The provisions of these rules do not confer a right upon any party.

11.2(1) *Financial responsibility required.* To be eligible for benefits under Iowa Code sections 455G.9 and 455G.21, any owner or operator applying for such benefits shall demonstrate that such owner or operator had continuous financial responsibility coverage in effect using a method provided for under 567—Chapter 136, beginning no later than October 26, 1990. If an owner or operator is unable to demonstrate financial responsibility coverage, or there is a lapse in the financial responsibility coverage for any period after October 26, 1990, the owner or operator will no longer be eligible for benefits if the site for which benefits are being requested had active tanks during the time the owner or operator was unable to demonstrate financial responsibility or if there is a lapse of financial responsibility coverage subject to the following limitation:

a. The financial responsibility coverage requirement shall not be required on temporarily closed tanks consistent with subrule 11.2(3).

b. An owner or operator who has had a lapse of financial responsibility coverage shall be allowed to remain eligible for remedial benefits if the following conditions are met:

(1) The owner or operator applies for reinstatement of remedial benefits and submits a reinstatement fee according to the following table:

Years for Which Financial Responsibility Not Demonstrated	Per-Tank Reinstatement Fee
July 1, 1991, through June 30, 1992	$330
July 1, 1992, through June 30, 1993	$415
July 1, 1993, through June 30, 1994	$495
July 1, 1994, through June 30, 1995	$575
July 1, 1995, through present	$450

For each fiscal year in which the owner or operator lacked financial responsibility coverage, such owner or operator shall pay the per-tank reinstatement fee for such fiscal year, as set forth above, for each active tank. The reinstatement fees above are for full years and shall be prorated on a per-month basis for each month or portion of a month for which there was a lapse of financial responsibility coverage. There is a minimum reinstatement fee of $500 per site per lapse of coverage.

(2) At the time of the application for reinstatement of remedial benefits, all active tanks must be in compliance with all state and federal technical and financial responsibility requirements.

(3) The owner or operator is in compliance with all other requirements of this chapter.

(4) An owner or operator is only eligible for reinstatement of remedial benefits one time per site. The one-time reinstatement may remedy multiple past lapses in financial responsibility. If there is subsequent lapse of financial responsibility coverage on any active tank on site after remedial benefits have been reinstated, the owner or operator will lose eligibility for remedial benefits and will be subject to cost recovery pursuant to Iowa Code section 455G.13.

c. A claim for benefits under any portion of 591—Chapter 11 that has been deemed ineligible due to a failure to maintain financial responsibility on a tank or tanks may be eligible, notwithstanding the failure to maintain financial responsibility, under the following conditions:

(1) The release for which the claim is made occurred prior to October 26, 1990; and

(2) The claimant is in compliance with all other requirements of this chapter; and

(3) The claimant pays a reinstatement fee equal to the reinstatement fee provided for in 591—paragraph 11.2(1)*"b."* The amount of $150 per tank shall be used to calculate the charge for reinstatement for the period from October 26, 1990, to July 1, 1991; and

(4) The application for reinstatement complies with 591—subparagraph 11.2(1)*"b"*(4).

11.2(2) *Impact of insurance on remedial account benefits.* If owners or operators have insurance to cover corrective action costs for their underground storage tanks after January 1, 1985, other than pursuant to Iowa Code section 455G.11 or other than pursuant to 40 CFR 280.95, 280.96, 280.99, 280.101, 280.102, and 280.103, the remedial account is available to eligible owners and operators only as follows:

a. The remedial account will pay the deductible amount applicable to such insurance for owners and operators who are eligible for remedial account benefits, subject to the applicable remedial account deductible and copayment provisions.

b. Except for payments made pursuant to 11.2(2)*"a,"* remedial account benefits are secondary to all such insurance.

c. Remedial account benefits shall not be used to reimburse insurance companies for proceeds paid by those companies pursuant to the terms of such insurance.

d. In the event of a dispute between the insurance company and the owner or operator or the board regarding insurance coverage, otherwise eligible owners and operators will receive remedial account benefits upon assigning their interest in such insurance to the board.

11.2(3) *Technical requirements.* An owner or operator eligible for remedial benefits who complied with 11.2(1) by using program insurance authorized pursuant to Iowa Code section 455G.11 will remain eligible for remedial benefits even though the insured tanks were not upgraded by December 22, 1998, under the following conditions:

a. The owner or operator temporarily closed the tanks in compliance with the closure requirements of the environmental protection commission 567—subrule 135.9(1) while the tanks were still insured under Iowa Code section 455G.11; and

b. The owner or operator certifies that the tanks continuously had financial responsibility coverage acceptable under 567—Chapter 136 from October 26, 1990, until the temporary closure; and

c. The owner or operator establishes that the tanks were empty and were not used during the entire period of the temporary closure. "Empty" means all materials have been removed from the tanks using commonly approved practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent of weight of the total capacity of the tank system, remain in the tank system; and

d. The owner or operator establishes that, during the entire period of the temporary closure, vent lines were left open and functioning and all other lines, pumps, manways, and ancillary equipment were capped and secured; and

e. The owner or operator certifies that, within one year from the time the tanks were temporarily closed, the tanks were either permanently closed, removed and replaced, or upgraded; and

f. The owner or operator certifies that the upgraded tanks and replacement tanks meet the new tank or upgrade standards of the environmental protection commission rule 567—135.3(455B); and

g. Financial responsibility for the tanks, using a method provided for under 567—Chapter 136, was in effect; and

h. The owner or operator meets all other applicable requirements pertaining to remedial benefits. An owner or operator receiving remedial account benefits pursuant to this subrule will be subject to cost recovery pursuant to Iowa Code section 455G.13 in the event the owner or operator does not comply with all of the conditions of this subrule, the provisions of the certifications required by this subrule, and applicable statutes and rules of the environmental protection commission and the board.

11.2(4) *Compliance with report submittal deadlines.* To be eligible for remedial or innocent landowner benefits, claimants must comply with all department of natural resources (DNR) deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements as published in 567—Chapter 135, and must, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later, provide a copy of an executed contract with a certified groundwater professional, which contract must include a timetable that meets DNR deadlines for completion of a Tier 1 and Tier 2 if required.

11.2(5) *Tanks and sites not eligible.* The following underground storage tanks are not eligible for remedial account benefits:

a. Tanks that were taken out of use prior to January 1, 1974. For purposes of this rule, tanks taken out of use are tanks which have not actually been used by either depositing petroleum in the tanks or by pumping petroleum from the tanks.

b. Underground storage tanks which were removed from the ground prior to July 1, 1985.

c. Underground storage tanks which were closed prior to July 1, 1985.

d. Underground storage tanks which do not contain petroleum. For the purposes of this subrule, petroleum means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60° F and 14.7 pounds per square inch absolute). The following two categories of substances are not petroleum:

(1) Substances which are regulated as hazardous waste under 42 U.S.C. 6921 et seq.

(2) Substances which would be regulated under 42 U.S.C. 9601 et seq., if the substance were to leak from a tank, related piping, other part of the system or from spills or releases into the environment, including lands, waters and air.

11.2(6) *Retroactive claims.*

a. Retroactive claims are:

(1) Claims which were filed with the board prior to January 31, 1990, for releases reported to the DNR after July 1, 1987, but prior to May 5, 1989; and

(2) If filed by a city or county, claims which were filed with the board prior to September 1, 1990, for releases reported to DNR after July 1, 1987, but prior to May 5, 1989; and

(3) Claims filed with the board prior to September 1, 1990, for releases reported to the DNR after January 1, 1984, but prior to July 1, 1987.

b. Retroactive claims shall be eligible for reimbursement if all of the following criteria are met:

(1) The claim has been verified and all supporting materials have been supplied to the administrator for review; and

(2) A signed and notarized claim form is submitted to the board; and

(3) The claimant is not a person whose method of showing proof of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa environmental protection commission's underground storage tank financial responsibility rules,

567—Chapter 136, is one in which the ultimate financial responsibility for corrective action costs is not shifted from the owner or operator; and

(4) The claimant satisfies the copayment requirements of Iowa Code section 455G.9(4); and

(5) The claimant has not filed bankruptcy anytime after:

1. July 1, 1987, if the release was reported to DNR prior to May 5, 1989, but after July 1, 1987; or

2. January 1, 1985, if the release was reported to DNR prior to July 1, 1987, but after January 1, 1984.

11.2(7) *Remedial claims.* Remedial claims are claims filed with the board prior to February 26, 1994, for releases reported to DNR after May 5, 1989, and on or before October 26, 1990. Remedial claims shall be eligible for reimbursement if all of the following criteria are met:

a. A signed and notarized claim form is submitted to the board.

b. All bills and estimates pertinent to the submitted claim are received by the board, along with any contracts, any remedial plans and correspondence for budget approval on the work required by DNR.

c. The work is complete or, if ongoing, is approved by the administrator and in accordance with priority rules.

d. The owner or operator has met all relevant deadlines and DNR's technical requirements for cleanup. To be eligible, corrective action costs must be reasonable and necessary to complete the work required by DNR. The board shall reimburse or pay only those corrective action costs which will cover the work as mandated by Iowa Code sections 455B.471 to 455B.479.

e. The claimant satisfies the copayment requirements of Iowa Code section 455G.9(4).

11.2(8) *Innocent landowner claims.* Consistent with Iowa Code chapter 455G, the board may reimburse an owner of petroleum-contaminated property, or an owner or operator of an underground storage tank located on such property, who, but for this rule because of the date the release was reported, because of the date the claim was filed, because the tank(s) in question was removed from service prior to January 1, 1974, or because the tank(s) in question was removed or permanently closed prior to July 1, 1985, would not be eligible to receive benefits under Iowa Code section 455G.9. Eligible expenses shall not exceed the benefits such claimant would otherwise receive if such claimant were eligible under Iowa Code section 455G.9(1)*"a"*(1) to (3). All such reimbursements shall be subject to:

- The copayment requirements of Iowa Code section 455G.9(4); claims filed that meet the priority in paragraph *"b"* or *"d"* of this subrule shall not incur any copayment for costs incurred after January 1, 2010;
- The requirements of 11.2(1); and
- The available funding and limitations of the innocent landowner fund created by Iowa Code section 455G.21(2)*"a"* for corrective action.

In the event the innocent landowner fund lacks sufficient funds to pay all claims submitted, innocent landowner claims shall be subject to the following priority:

a. Late filed retroactive claims. For releases reported to DNR on or after January 1, 1984, but prior to May 5, 1989:

(1) Claims must be filed with the board by February 26, 1994.

(2) All costs incurred on or after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

b. Preregulation claims. For releases from petroleum underground storage tanks (USTs) which are not eligible for remedial account benefits under Iowa Code section 455G.9(1)*"a"*(1) to (3) only because the USTs were taken out of use prior to January 1, 1974, or permanently closed or removed before July 1, 1985:

(1) Claims must be filed with the board by December 1, 1997.

(2) USTs must not have been operated on the site since the time the tanks were taken out of use or permanently closed.

(3) All costs incurred after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

(4) The owner cannot have claimed bankruptcy on or after the date of the reported release.

c. Late filed remedial claims. For releases reported by owners of petroleum-contaminated property as defined under Iowa Code section 455G.9(8) who did not comply with the reporting or filing deadlines identified in this chapter, with priority to those owners who did not have knowledge of the USTs or did not have control over the property:

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to DNR consistent with DNR requirements.

(3) The owner did not have knowledge of the UST or of a release impacting the property prior to acquisition of the property if the property was acquired on or after October 26, 1990, or, if the owner did have such knowledge, the acquisition was necessary to protect a security interest.

(4) All costs incurred on or after July 10, 1996, must be approved by the board to be eligible for reimbursement.

(5) The owner cannot have claimed bankruptcy on or after the date of the reported release.

d. Acquired properties. For releases reported by owners of petroleum-contaminated property as defined under Iowa Code section 455G.9(8) who acquired the petroleum-contaminated property after October 26, 1990, and who did not comply with the reporting or filing deadlines identified in this chapter:

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to the DNR consistent with DNR requirements.

(3) The owner could not have been the owner or operator of the UST system which caused the release prior to acquiring the property after October 26, 1990.

(4) All costs incurred on or after December 1, 1996, must be preapproved by the board to be eligible for reimbursement.

(5) For claims submitted under this paragraph, the precorrective action value shall be the purchase price paid by the owner after October 26, 1990.

(6) For claims submitted under this paragraph, the purchase must have been an arm's-length transaction.

(7) The owner cannot have claimed bankruptcy on or after the date of the reported release.

e. Other innocent landowner claims. Claims for releases submitted to the board after December 1, 1997, which would have been eligible for benefits pursuant to paragraphs *"a"* through *"d"* of this subrule if filed by December 1, 1997, will be eligible for reimbursement subject to a first-in, first-out priority and the funding limitations of the innocent landowner fund. The owner must demonstrate that the owner has met all other requirements of this subrule in order to receive benefits.

11.2(9) *County tax deed claims.* The board shall pay 100 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 Iowa Code 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.

11.2(10) *Hardship funding claims.* The board shall pay 100 percent of corrective action costs and third-party liability not to exceed $1 million for a release for which the eligible claimant, pursuant to Iowa Code section 455G.9, is subject to financial hardship if all of the following conditions are met:

a. The claimant has completed the claim form, had it notarized, and submitted it to the board on or before December 1, 1996.

b. The claimant is a small business as defined in Iowa Code section 455G.2(18) and has submitted self-certification forms documenting small business status.

c. The claimant does not have a net worth of $15,000 or greater and has submitted documentation of net worth in accordance with Iowa Code section 455G.10(4) and 591—12.6(455G) or the claimant is an individual who is financially unable to pay copayments associated with the cost of corrective action as determined by using the DNR's evaluation of ability to pay found at 567—135.17(455B).

d. The release for which the claim has been made occurred prior to October 26, 1990.

e. The release for which the claim has been made was reported to DNR on or before December 1, 1996.

f. The site for which the claim is made is in compliance with all technical requirements of 567—Chapters 135 and 136.

g. The site for which the claim is made shall not be deeded or quitclaimed to the state or board in lieu of cleanup.

h. Property taxes shall not be delinquent, unpaid or otherwise overdue.

i. A responsible party with the ability to pay corrective action expenses cannot be found.

j. The release for which the claim is made is one for which the federal Underground Storage Tank Trust Fund or other federal moneys do not provide coverage.

k. The work is complete or, if ongoing, is approved by the administrator or the board pursuant to the cost containment provisions of Iowa Code section 455G.12A.

l. All claims and payments are subject to prioritization guidelines as may be published by the board at the time of payment.

11.2(11) *Governmental subdivision claims.* The board shall pay 100 percent of the costs of corrective action for a governmental subdivision in connection with a tank, where the release occurred, 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 the governmental subdivision acquired, and does not become a responsible party by sale or transfer of property so acquired.

Also, the board shall pay 100 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 subrule whether or not the property was acquired on or after May 3, 1991.

11.2(12) *Inheritance claims.* The board may pay claims for corrective action for the costs of a release if the claimant proves that all of the following conditions are met:

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

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

c. 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.

d. The release was reported to the board by October 26, 1991.

11.2(13) *Financial institution claims.* Reserved.

11.2(14) *State agency or department claims.* Reserved.

11.2(15) *No further action claims.* The board shall pay for 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 of natural resources, after January 31, 1997, has issued a no further action certificate under Iowa Code section 455B.474. As a condition of receiving benefits under this subrule, the department of natural resources 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 Iowa Code section 455G.9 prior to the issuance of the no further action certificate. No more than $100,000 per site may be used for the costs of a corrective action under this subrule. This

subrule 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 subrule.
[**ARC 9623B**, IAB 7/27/11, effective 8/31/11]

591—11.3(455G) Eligible costs.

11.3(1) Claims may be paid monthly. Claim payments will include all approved expenses, including tank and piping removal for active systems if the tank and piping removal occurred on or before March 17, 1999, and other costs as provided in Iowa Code chapter 455G. Replacement of excavated materials shall be a reimbursable expense. Contractors and groundwater professionals shall confirm that the work meets DNR requirements.

11.3(2) The board shall reimburse or pay eligible expenses only if those expenses have been approved prior to the commencement of work, as required by Iowa Code section 455G.12A. No corrective action costs shall be reimbursed unless reasonable, necessary and approved by the board or its designee.

11.3(3) When practical to do so, the board shall bid any work associated with this chapter with firms that have indicated to the administrator an interest to be on the board's list of firms supplying goods or services. Any firm supplying goods and services including, but not limited to, testing laboratories, cleanup equipment manufacturers and leak detection testing firms may also be included in the vendor list.

11.3(4) Reimbursement to the owner, operator or contractor under this chapter is subject to overall site cleanup report prioritization and classification. Sites which are classified as low risk are eligible for remedial account benefits for monitoring expenses required by Iowa Code section 455B.474(1)*"f"*(6), unless the tank is removed, upgraded, or replaced.

11.3(5) The board may reimburse expenses associated with tank systems described in paragraphs 11.2(5)*"a"* to *"c"* when all of the following conditions have been documented:

a. The release for which benefits are being requested is from tanks operated on a site which is otherwise eligible for benefits under Iowa Code section 455G.9(1); and

b. The release for which benefits are being requested is commingled with an on-site release which is eligible for benefits under Iowa Code chapter 455G; and

c. The site has had active underground storage tanks continuously from the date of the release for which benefits are being requested until the date on which the release for which the site is currently eligible for benefits was reported to DNR; and

d. The claimant certifies that the tanks for which benefits are being requested will be permanently closed within 90 days of notification of eligibility and does permanently close the tanks in compliance with rule 567—135.9(455B) within the 90 days; and

e. All other eligibility requirements have been met.

11.3(6) An owner or operator of a site which is eligible for benefits under Iowa Code section 455G.9 who discovered a tank on the site after October 26, 1990, shall maintain eligibility for benefits even if that tank does not meet the financial responsibility requirements continuous since October 26, 1990, if all of the following conditions have been met:

a. The tank was discovered after October 26, 1990; and

b. The tank has not been operated since the discovery and has never been operated by the claimant; and

c. The tank has been emptied of all product as soon as practicable after it was discovered; and

d. The tank was properly registered with DNR as soon as practicable after it was discovered; and

e. The tank is a regulated tank, pursuant to Iowa Code section 455G.1, which previously contained only petroleum products as defined in this chapter; and

f. The tank is permanently closed within 90 days of discovery or by July 1, 1995, whichever date is later.

11.3(7) Payments for conducting risk-based corrective action (RBCA) analysis on monitor-only sites. When reviewing applications for benefits for the cost of completing an RBCA analysis on a site which has an approved Site Cleanup Report (SCR) requiring monitoring only, or on a site with an SCR

submitted between August 15, 1996, and January 31, 1997, the criteria in this rule shall apply when determining payment eligibility.

a. One hundred percent of the costs may be preapproved not to exceed $10,000 for all activities associated with the completion of the Tier 1, Tier 2, or Tier 3 analysis. Costs which exceed $10,000 will be subject to the limitations of Iowa Code section 455G.9(1)*"f."*

b. Sites receiving benefits pursuant to this rule must comply with the other requirements of board rules.

11.3(8) Ineligible costs and copayments.

a. The board shall pay any eligible claims subject to copayment requirements unless the payment of any copayment for the claim is specifically exempted in Iowa Code section 455G.9.

b. The claimant shall pay a copayment equal to the greater of either $5,000 or 18 percent of the first $80,000. All approved costs that exceed $80,000, up to the statutory benefit limit for the claim, will be paid by the board.

c. The first $20,000 of costs incurred for assessment of a site eligible to receive benefits will be exempted from the copayment requirement. Assessment includes, but is not limited to, risk-based corrective action Tier 1 and Tier 2 reports and site cleanup reports. Assessment does not include excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, cleansing of groundwaters or surface waters, actions taken to address contamination and its possible influence on a receptor or potential receptor or the preparation of a corrective action design report.

11.3(9) The board shall only reimburse eligible claimants for corrective action. "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 or risk-based corrective action tiered 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.

11.3(10) Expenses of cleanup not required. Any 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 are the responsibility of the person contracting for the excess cleanup.

11.3(11) Permanent closure of an underground storage tank system.

a. Costs for the permanent closure of an underground storage tank system are eligible for reimbursement from the board if the following requirements are met:

(1) The underground storage tank system to be permanently closed meets one or more of the following criteria:

1. The system does not meet department performance standards for a new or an upgraded tank, or
2. The system is required to be closed in accordance with department rules, or
3. The owner of the system has opted to close the system at the owner's own will prior to allowing the tank to become out of compliance.

(2) For the purpose of this rule, an "underground storage tank system" means all of the underground storage tanks, any connected underground piping, any underground ancillary equipment and any containment system on a particular site identified by a department UST registration number.

(3) The permanent closure activities occurred on or after July 1, 2010.

b. A claim for reimbursement from the board is subject to board preapproval requirements.

c. The board may elect to provide for the direct removal of any tanks eligible through a board-contracted vendor. If costs exceed the $15,000 limit, the board may pursue a cost-recovery action in accordance with Iowa Code section 455G.13.

d. Claimants shall be responsible for ensuring that any persons performing work meet all applicable licensing requirements or all applicable certification requirements or both that may exist at the time of completion of the work to be reimbursed. If the work is performed by a board-contracted vendor, the board shall ensure that licensing and certification requirements of the general contractor are met.

e. Claims made under this subrule are not subject to Iowa Code chapter 455G copayment requirements.

f. The board may contract with a vendor to remove tanks at sites that fail to meet the requirements of subparagraph 11.3(11)*"a"*(1). These sites shall be subject to cost recovery, which may include placement of a lien on the property.

g. Prior to the permanent closure, budgets shall be provided to the administrator that outline the cost and scope of work proposed. The cost for system closure shall be separated from all other corrective action costs incurred on an individual tank site.

h. The maximum closure benefit payable from the remedial account on any tank system to be permanently closed after July 1, 2010, shall be $15,000 for any one site identified by a department UST registration number.

i. Tanks and sites not eligible. Underground storage tanks that are not eligible for underground storage tank system closure benefits include:

(1) Farm or residential tanks of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(2) Tanks used for storing heating oil for consumptive use on the premises where stored,

(3) Septic tanks, and

(4) Underground storage tanks which do not contain petroleum.

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591—11.4(455B,455G) Tank and piping upgrades and replacements.

11.4(1) Definitions.

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

"Automatic in-tank gauging" means a device used for leak detection and inventory control in tanks that meets DNR's standards as set out in 567—paragraph 135.5(4)*"d."*

"Board" or *"UST board"* means the Iowa comprehensive petroleum underground storage tank fund board as provided for in Iowa Code section 455G.4.

"DNR" means the Iowa department of natural resources.

"Environmentally sensitive site" means, as classified under the Unified Soil Classification System as published by the American Geologic Institute or ASTM designation: D 248785, any site where the native soils outside or under the tank zone are materials where more than half of the material is larger than no. 200 sieve size. As used herein, "tank zone" means the native soils immediately outside the excavation area or nearest native soil under the tank.

The following classifications of soil descriptions are considered environmentally sensitive:

1. Well-graded gravels, gravel-sand mixtures, little or no fines, classified using the group symbol "GW";
2. Poorly graded gravels, gravel-sand mixtures, little or no fines, classified using the symbol "GP";
3. Silty gravels, gravel-sand-clay mixtures, classified using the symbol "GM";
4. Clayey gravels, gravel-sand-clay mixtures, classified using the symbol "GC";
5. Well-graded sands, gravelly sands, little or no fines, classified using the symbol "SW";
6. Poorly graded sands, gravelly sands, little or no fines, classified using the symbol "SP";
7. Silty sands, sand-silt mixtures, classified using the symbol "SM".

In addition, environmentally sensitive sites include any site which is within 100 feet of a public or private well, other than a monitoring well on a site, and any site where the tank is installed in fractured bedrock or "Karst" formations. Any one of the above-specified conditions shall constitute an environmentally sensitive site under this rule.

A site shall be classified as environmentally sensitive when:

Fifty percent or more of the soils from a boring or a monitoring well are logged and classified as one or more of the areas noted in paragraphs "1" through "7" above and 50 percent of the total wells located on or immediately next to the property show the same or similar conditions. If no testing of the site has occurred and the soil condition as classified under the Unified Soil Classification System in or under the tank zone is one of the conditions as classified, the site shall be considered to be environmentally sensitive. Reports previously prepared on the site and available from DNR may be used to make the soil classification. At least three borings/wells must have been completed. If fewer than three have been completed, an additional well which triangulates the tank zone shall be completed to determine the types of soils present.

For the purposes of this definition, fractured bedrock or "Karst" formations appearing in the tank zone or piping run, or within a 25-foot diameter around the tank zone or piping run, or within 25 feet of the bottom of the tank excavation area shall be classified environmentally sensitive. Generally available data, including that available from local utilities, may be used when specific drilling has not determined that conditions specified in this definition have not been identified on the site. If the site shows any surface condition which is fractured bedrock or "Karst," then the site shall be classified as being environmentally sensitive.

For the purposes of this definition, wells are those which are in use and the water is being used for human consumption. The well as developed shall generate a volume of two gallons per minute, unless a holding device or cistern is used for water pumped. An abandoned well, or a well being used for some other purpose, shall not be included in the definition, unless the end use may be for human consumption.

"Piping replacement" means any modernization or modification of piping at a site which includes the removal of the existing piping and the installation of new piping.

"Piping upgrade" means any modernization or modification of piping at a site which does not include the removal of the existing piping and the installation of new piping.

"System upgrade" or *"upgrading"* means the modernization or modification of underground storage tank system installations through tank and piping upgrades to comply with the rules of DNR under 567—subrule 135.3(2).

"Tank replacement" means any modernization or modification of a tank at a site which includes the removal of the existing tank and the installation of a new tank.

"Tank upgrade" means any modernization or modification of a tank at a site which does not include the removal of the existing tank and the installation of a new tank.

"Upgrade benefit" means the cost of board-approved systems specified in subrule 11.4(6). If the installation includes a board-approved secondary containment system, the upgrade benefit relates specifically to the cost difference attributable to the board-approved system specified in subrule 11.4(6). The upgrade benefit includes the following:

1. Cost of double walled tanks and pipes minus the cost of single wall tanks and piping, or
2. Cost of double walled steel tanks minus the cost of single wall steel tanks, or
3. Cost of nonmetallic double walled tanks minus the cost of nonmetallic single wall tanks.

In addition, the upgrade benefit shall include the cost of the additional labor, if any, to install the board-approved system which is in excess of the cost to install a single wall system. The upgrade benefit also includes the cost of automatic in-tank gauging equipment when installed in conjunction with secondary containment, but such costs shall be limited to the lowest expense for the system best suited to provide a reasonable degree of protection.

If the system does not include the approved secondary containment, no upgrade benefit is payable. Secondary containment as defined in subrule 11.4(6) is mandatory after March 25, 1992.

11.4(2) The maximum upgrade benefit payable from the remedial fund on any tank or system installed since January 1, 1985, to meet upgrading requirements shall be $10,000 for any one site, subject to applicable copayment requirements as specified in Iowa Code section 455G.9. Benefits payable under subrule 11.4(6) cover the additional cost of the tank system upgrade or replacement as set forth in the definition of upgrade benefits. Prior to installation, budgets shall be provided to the administrator outlining the cost and scope of work proposed and the cost differences between a single

wall system and the board-approved system which is proposed. The cost of the original upgraded or new system without board-approved secondary containment as defined herein is not subject to these fund upgrade benefits for tank system upgrades or replacements.

11.4(3) The cost for system upgrading or replacement shall be separated from all other corrective action costs incurred on an individual site classified as high risk or low risk by DNR. The upgrade benefits are not payable on any site classified by DNR as a No Action Required site.

11.4(4) Upgrade benefit payments under subrule 11.4(6) shall be made upon evidence that the upgrade met standards in 567—Chapter 135 and DNR registration Form 148 has been completed and mailed to DNR and the administrator. These upgrade benefits shall be paid only if all requirements of 591—Chapter 15 have been met. If a site does not comply with the applicable provisions of 591—Chapter 15, the site is not eligible for these upgrade benefits unless installation or upgrade occurred prior to October 26, 1990. In that event, the individual reimbursement request will be reviewed to determine if other information is necessary before upgrade benefit payment can be made. In addition, the completed work must be within the budget previously approved by the administrator pursuant to Iowa Code section 455G.12A.

11.4(5) Upgrades and replacements allowed at contaminated sites. Iowa Code section 455B.474(1)*"f"*(8) provides that the replacement or upgrade of tank systems on high- or low-risk sites must be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board-approved methodology. The following are the upgrade and replacement options which are board approved for purposes of Iowa Code section 455B.474(1)*"f"*(8):

a. Tank upgrades. The following options are allowed for tank upgrades on any contaminated site:

(1) The tank meets DNR's new tank standards set forth in 567—paragraph 135.3(1)*"a"*; or

(2) The tank meets DNR's upgrade standards set forth in 567—paragraphs 135.3(2)*"b"* and *"d."*

b. Tank replacements. The following options are allowed for tank replacements:

(1) On any contaminated site, a double walled tank or a tank equipped with a secondary containment system meeting DNR's new tank standards set forth in 567—subrule 135.3(1) and with monitoring of the space between the primary and secondary containment structures in accordance with DNR's standards set forth in 567—paragraph 135.5(4)*"g."*

(2) On any contaminated site which is not environmentally sensitive the following additional options are allowed:

1. Tanks meeting DNR's new tank standards set forth in 567—paragraph 135.3(1)*"a"* with automatic in-tank gauging acceptable under 567—subrule 135.5(4).

2. Tanks meeting DNR's new tank standards set forth in 567—paragraph 135.3(1)*"a"* with an electronic tank level monitor used in conjunction with a DNR-approved statistical reconciliation method acceptable under 567—subrule 135.5(4). The owner must have monthly records on premises which show that all requirements for statistical reconciliation have been met.

c. Piping upgrades. The following options are allowed for piping upgrades at any contaminated site:

(1) Double walled piping.

(2) Single walled piping installed in a barrier providing secondary containment between soil and the piping.

(3) Single wall piping meeting DNR's upgrade standards set forth in 567—paragraph 135.3(2)*"c"* and leak detection standards set forth in 567—paragraph 135.5(2)*"b."*

d. Piping replacements. The following options are allowed for piping replacements:

(1) For any contaminated site:

1. Double walled piping.

2. Single walled piping installed in a barrier providing secondary containment between soil and the piping.

3. On suction systems, single wall piping when only one check valve is on the line directly under the pump.

(2) For sites which are not environmentally sensitive, suction systems with single wall piping meeting DNR's upgrade standards set forth in 567—subrule 135.3(2) on pipes with leak detection are allowed if there is no more than one valve on the piping. All suction systems shall be installed with the slope of the pipe back to the tank and shall have only one check valve located directly under the suction pump.

e. Spill and overfill protection, cathodic protection, and leak detection. Nothing in this rule alters DNR's upgrade requirements for spill and overflow protection, cathodic protection, and leak detection.

11.4(6) Tank and piping upgrades and replacements eligible for upgrade benefits.

a. The following tank and piping upgrades or replacements are eligible for upgrade benefits if completed on or before March 17, 1999:

(1) Double walled tanks.

(2) Single walled tanks meeting DNR's requirements as specified in 567—paragraph 135.5(4)*"g,"* the tank zone providing an impermeable barrier between native soils and the tank, thus providing secondary containment.

(3) Double walled piping.

(4) Single wall piping installed in a barrier system, providing secondary containment between the soil and the piping. Nothing in this rule alters upgrade requirements for spill/overfill protection, cathodic protection and leak detection.

b. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurred on or after March 25, 1992, and on or before March 17, 1999, on sites which are classified as being environmentally sensitive:

(1) Pressurized systems: Tanks and piping shall comply with one of the tank and piping options specified in 11.4(6)*"a."*

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system pipes shall have the check valve located at the suction pump. These systems shall meet one of the options specified in 11.4(6)*"a,"* except that piping may be single wall when one check valve is on the line, under the pump.

c. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurred on or after March 25, 1992, and on or before March 17, 1999, on sites which are not classified as being environmentally sensitive:

(1) Pressurized systems: Piping shall comply with one of the pipe options specified in 11.4(6)*"a."* Tanks installed must be either one of the options specified in 11.4(6)*"a"* or be a DNR-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4) or, in lieu of automatic in-tank gauging, be a DNR-approved electronic tank level monitor in conjunction with a DNR-approved UST statistical inventory reconciliation method pursuant to 567—subrule 135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system piping shall have the check valve located at the suction pump. These systems must be either one of the options specified in 11.4(6)*"a"* or:

1. Pipes: Single wall pipes meeting DNR's upgrade standards on the pipes with leak detection pursuant to 567—subrule 135.3(2). If more than one valve is on the pipe, this option is not available.

2. Tanks: Must be either one of the options specified in 11.4(6)*"a"* or be a DNR-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4) or, in lieu of automatic in-tank gauging, be a DNR-approved electronic tank level monitor in conjunction with a DNR-approved UST statistical inventory reconciliation method pursuant to 567—subrule 135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

11.4(7) Any system upgrade or replacement installed prior to March 25, 1992, which complies with the provisions of this rule shall be eligible for upgrade benefits if the system has been fully upgraded or replaced in accordance with 567—Chapter 135.

11.4(8) The board reserves the right to establish cost controls on the purchase and installation of underground storage tank equipment and systems. Upgrade benefits are not equipment and capital improvements for purposes of Iowa Code section 455G.9(6).

11.4(9) Evidence of insurance or self-insurance shall be provided to DNR upon completion of the upgrade or replacement unless the Iowa UST program provides insurance coverage. If the Iowa UST program provides coverage, the administrator will notify DNR.

11.4(10) Failure to obtain approval or qualify for upgrade benefits may be appealed as provided in 591—Chapter 17.

This rule is intended to implement Iowa Code sections 455B.474(1)*"f"*(8) and 455G.9(1)*"a"*(5).

591—11.5(455G) Cost recovery and containment. The board, in addition to measures described to preapprove all costs, may take other actions to ensure costs are reasonable and to recover moneys spent at sites that become ineligible. Subrogation and cost recovery opportunities shall be pursued against any responsible party, as deemed appropriate by the board to do so.

11.5(1) *Definitions.* For purposes of this rule, the following terms shall have the meanings set forth below:

"Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified. Entities which have one or more officers or directors in common, whether simultaneously or otherwise, shall be rebuttably presumed to be affiliates.

"Control," "controlling," "controlled by" and *"under common control with"* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies or day-to-day activities of a person, whether through ownership, by contract, or otherwise.

"Predecessor" means a person the major portion of whose business and assets another person acquired in a single succession or in a series of related successions in which the acquiring person acquired the major portion of the business and assets of the acquired person.

11.5(2) *Liens on tank sites.*

a. The board shall have a lien upon real property where an underground storage tank, which was the subject of corrective action, was or is situated and the board has incurred expenses related to the property.

b. The board's lien shall be in the amount the owner or operator of the underground storage tank is liable to the fund.

c. The liability of an owner or operator shall be no less than the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in Iowa Code section 455G.13(1), if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of DNR or the fund or with Iowa Code chapter 455G.

d. The liability of an owner or operator eligible for assistance under the remedial account shall be no less than the amount of any unpaid portion of the deductible or copayment.

e. A lien shall attach at the later of the following: the date the fund incurs an expense related to the property or the date the board mails a certified letter, return receipt requested, to the last-known address of the owner or operator demanding payment for fund expenses.

f. Liens under this rule shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing for record a notice with the appropriate county official of the appropriate county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions.

g. In order to preserve a lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the board shall file with the recorder of the county in which the property is located a notice of the lien. The county recorder of

each county shall record such liens in the index of income tax liens. The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the notice, and shall immediately index the notice in the index book and record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of indexing.

h. The board shall pay a recording fee as provided in Iowa Code section 331.604 for the recording of the lien, or for its satisfaction.

i. Upon the payment of the lien as to which the board has filed notice with a county recorder, the board shall file with the recorder a satisfaction of the lien and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

11.5(3) *Fraud disqualification of contractors.* No contractor or subcontractor shall be eligible for payment with UST program funds, nor shall any owner or operator be reimbursed for payments to any contractor or subcontractor, nor shall any contract between an owner or operator and a contractor or subcontractor be approved if the administrator determines that such contractor or subcontractor or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10 percent or more of such contractor or subcontractor:

a. Has, within the preceding five years, pleaded guilty to, been convicted of, or received a suspended or deferred judgment for theft, fraud, or any other felony or misdemeanor involving deceit, attempted deceit, or falsification or alteration of documents;

b. Is subject to an order, judgment, or decree of a court of competent jurisdiction (including probation) or an administrative order of any state or federal administrative agency entered within the previous five years, which order, judgment, decree, or administrative order temporarily, preliminarily, or permanently enjoins or restrains the contractor or subcontractor from engaging in or continuing the performance of any services relating to underground storage tanks or the assessment or remediation of petroleum contamination as a consequence of the contractor's or subcontractor's own misconduct, negligence, or misfeasance; or

c. Has, within the previous five years, obtained, or attempted to obtain, UST fund benefits:

(1) By means of any intentional or reckless misrepresentation;

(2) By means of any falsified or altered document;

(3) For services which were not performed; or

(4) By other improper means.

11.5(4) *Waiver or modification of disqualification.* The administrator may, at the administrator's discretion, to avoid undue hardship to tank owners or operators, to the UST program, or to contractors or subcontractors, waive any disqualification under this rule as to work performed or to be performed for any or for specified owners or operators. The administrator may also condition or qualify the eligibility of a person or entity that is subject to disqualification hereunder to be paid with UST program funds upon such terms and conditions as the administrator shall, in the administrator's discretion, deem necessary to protect the integrity of the UST program. A disqualification under this rule shall cease to exist if:

a. The basis for the disqualification has been removed by the legislative body, court, or administrative agency creating it;

b. The court or administrative agency with primary jurisdiction over the disqualifying event issues a written waiver of the disqualification;

c. The court or administrative agency with primary jurisdiction over the disqualifying event declines in writing to enforce the disqualification; or

d. More than five years have elapsed since the occurrence of the disqualifying event.

11.5(5) *Notice of disqualification; reinstatement.* Following a determination that a contractor or subcontractor is disqualified pursuant to this rule, the administrator shall notify the contractor or subcontractor in writing that it is no longer eligible to be compensated with fund moneys. The administrator shall also, unless the disqualification has been waived as to existing clients of the contractor or subcontractor, notify in writing all known clients of the disqualified contractor or subcontractor who are participating in UST fund programs of the disqualification. A disqualified contractor or subcontractor may apply to the administrator for reinstatement of eligibility. If the disqualification has ceased to exist, the administrator, upon receiving such an application, shall

reinstate the eligibility of the contractor or subcontractor to be compensated with fund moneys. If the disqualification has not ceased to exist, the administrator may, in the administrator's discretion, reinstate the eligibility of the contractor or subcontractor. The administrator shall notify the contractor or subcontractor who has applied for reinstatement of the administrator's decision within 45 days. The administrator may condition or qualify the reinstatement of a contractor's or subcontractor's eligibility to be compensated with UST fund moneys upon such terms and conditions as the administrator shall, in the administrator's discretion, deem necessary to protect the integrity of the UST program.

11.5(6) *Verification of eligibility.* For purposes of implementing this rule, the administrator may require that, prior to the approval by the board of any contract or budget for assessment or remedial work, the contractor specified in such contract or budget, and all subcontractors to perform work thereunder, certify that the contractor or subcontractor is not subject to disqualification for any of the reasons specified in subrule 11.5(3). The administrator may develop, and revise as necessary, a form by which contractors and subcontractors may make such certification.

These rules are intended to implement Iowa Code section 455B.474 and chapter 455G.

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◊ Two or more ARCs

1 Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held October 11, 1994.

2 The December 26, 2007, effective date of 11.3(11)*"b"* was delayed until January 11, 2008, by the Administrative Rules Review Committee at its meeting held December 11, 2007.