

**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. Costs for the permanent closure of underground storage tank systems are eligible for reimbursement from the board if all of the following requirements are met:

*a.* The underground storage tank system to be permanently closed was already in place on the date an eligible claim was submitted to the board.

*b.* A claim for reimbursement from the board must have been made and must have been deemed eligible for the site, pursuant to Iowa Code section 455G.9 or 455G.21.

*c.* The permanent closure activities occurred on or after July 1, 2007. All costs must have been preapproved prior to the commencement of work.

*d.* For projects that include the removal of tank systems that are also associated with a larger scope of work, for example, the installation of a remediation system or expanded excavation or upgrading of a fuel delivery system, the budget for the entire scope of work must be submitted for any costs to be considered eligible for reimbursement.

*e.* The board may elect to provide for the direct removal of any tanks eligible through a board-contracted vendor. Any copayment shall be paid by the claimant upon removal of the tank system. The board will limit reimbursement for any removal to no more than the board would have paid had the board removed the tanks with any board-contracted vendor.

*f.* For claims submitted in situations where the tank owner and the eligible claimant are different parties, the board will reimburse costs under this subrule after invoices have been paid and only with

written acknowledgment consenting to the work completed by both parties and submitted with the invoices.

*g.* Claimants shall be responsible for ensuring that any persons performing work meet all applicable licensing or 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.

*h.* Claims made under this subrule are subject to Iowa Code chapter 455G copayment requirements and cost recovery enforcement.

*i.* The board may remove tanks at sites that fail to meet the requirements under paragraph “a” or “b” of this subrule through a board-contracted vendor. These sites shall be subject to cost recovery, which may include a lien on the property.