

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.