

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

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

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

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

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

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

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

b. The director has received either:

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

CERTIFICATION OF VALID CLAIM

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

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

(Notary) Date (Notary) Date; or

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

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

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