

CHAPTER 120
LANDFARMING OF PETROLEUM CONTAMINATED SOIL
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—120.1(455B) Purpose. The purpose of this chapter is to establish rules for the safe and effective remediation and disposal of petroleum contaminated soil (PCS) through landfarming. These rules are intended to satisfy the requirements of Iowa Code sections 455B.301A, 455B.304 and 455B.383.

567—120.2(455B) Applicability and compliance.

120.2(1) These rules apply to the landfarming of soils contaminated with biodegradable petroleum products including, but not limited to, gasoline, diesel fuel, kerosene, jet fuel, motor oil, hydraulic fluid, or some combination thereof. All PCS landfarming activities in which 3 or more cubic yards of PCS are excavated shall comply with this chapter. Uncontaminated soil that is excavated during the removal of the PCS shall not be counted toward the 3-cubic-yard applicability threshold.

120.2(2) These rules do not apply to PCS that is being remediated or disposed of at a sanitary landfill. For rules governing the remediation and disposal of PCS at a sanitary landfill, see 567—Chapter 109.

120.2(3) The issuance of a landfarm permit by the department in no way relieves the generator or permit holder of the responsibility of complying with all other local, state, or federal statutes, ordinances, and rules and other applicable requirements.

120.2(4) These rules do not apply to hazardous waste.
[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.3(455B) Definitions. The definitions set out in Iowa Code section 455B.301 shall be considered to be incorporated by reference in these rules. For the purposes of this chapter, the definitions found in 567—Chapter 100 shall apply.
[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.4(455B) Landfarming applicator permits.

120.4(1) *Permit required.* PCS shall not be landfarmed without a landfarm applicator permit from the department.

120.4(2) *Landfarm applicator permit.* Upon issuance of a landfarm applicator permit, the permit holder is authorized to apply PCS to the land to create one or more landfarms. This permit requires that landfarms be used for only one application of a particular source and type of PCS. This permit requires that no other PCS be applied within 15 feet of the area of land used as a landfarm until the landfarm is closed pursuant to rule 567—120.12(455B).

120.4(3) *Construction and operation.* Landfarms shall be constructed and operated according to these rules, any plans and specifications approved by the department, and the conditions of the permit. Any approved plans and specifications shall constitute a condition of the permit.

120.4(4) *Transfer of title and permit.* If title to a landfarm applicator permit is transferred to a third party, then the department shall transfer the permit within 60 days if the department has determined that the following requirements have been met:

a. The title transferee has applied in writing to the department within 30 days of the transfer of title to request a transfer of the permit.

b. The permitted applicator and title transferee are in compliance with Iowa Code chapter 455B, this chapter and the conditions of the permit.

120.4(5) *Permit conditions.* A permit may be issued with conditions, specified in writing by the department, that are necessary to ensure the landfarm can be constructed and operated in a safe and effective manner, and in compliance with Iowa Code chapter 455B and this chapter.

120.4(6) *Effect of revocation.* If a landfarm applicator permit held by any public or private agency is revoked by the department, then no new landfarm applicator permit shall be issued to that agency for a minimum of one year from the date the facility was brought into full compliance with the revocation order. Such revocation shall not prohibit the issuance of a permit for the same landfarm project to another landfarm application permit holder.

120.4(7) *Inspection of site and operation.* By obtaining an applicator permit, the permitted entity agrees that the department may inspect the facility and its operations at reasonable times to determine if the landfarm is in compliance with this chapter and the permit requirements.

120.4(8) *Duration of permits.* Landfarm applicator permits shall be issued and may be renewed for a three-year term.

120.4(9) *Request for permit renewal.* A request for permit renewal shall be in writing and filed at least 90 days before the expiration of the current permit. If the renewal applicant is found not to be in compliance with this chapter or the permit requirements, then the applicant shall achieve compliance or be placed on a compliance schedule approved by the department before the permit may be renewed.

120.4(10) *Request for permit modification.* Requests for permit modifications must be submitted in writing to the department with supporting documentation and materials.

120.4(11) *Factors in permit issuance decisions.* The department may request that additional information be submitted for review to make a permit issuance decision. The department may review and inspect the facility, its agents and operators, and compliance history. The department may review whether or not a good-faith effort to maintain compliance and protect human health and the environment is being made, and whether a compliance schedule is being followed. The department may issue a permit on a trial basis.

[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.5(455B) Landfarm permit application requirements.

120.5(1) *Landfarm applicator permits.* To apply for a landfarm applicator permit, the applicant shall submit the following information to the department:

a. The name, address, and telephone number of:

- (1) Agency applying for the landfarm applicator permit.
- (2) Owner(s) of the agency.
- (3) Individual responsible for record keeping and reporting.
- (4) An emergency contact person.

b. A plan of operations that complies with the requirements of rules 567—120.9(455B) and 567—120.11(455B).

c. An emergency response and remedial action plan (ERRAP) pursuant to rule 567—120.10(455B).

d. A signed and dated statement from the owner(s) of the agency which reads: “I guarantee that this agency will comply with 567—Chapter 120.”

120.5(2) *Incomplete applications.* If the department finds the permit application information to be incomplete, the department shall notify the applicant in writing of that fact and of the specific deficiencies. If the deficiencies are not corrected within 30 days, the department shall return the application materials to the applicant. The applicant may reapply without prejudice.

[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.6(455B) PCS analysis and characterization.

120.6(1) *Department-supervised emergency cleanups.* PCS originating from the cleanup of a spill or expedited overexcavation at a tank closure or upgrade under department jurisdiction shall be characterized and tested as follows before being landfarmed. Such PCS may be landfarmed prior to chemical testing, pursuant to the application rate in subrule 120.9(6) and reporting requirements of rule 567—120.11(455B), if permission is obtained from department emergency response personnel or the department field office with jurisdiction over the landfarm site.

a. *Source identification.* The name and address of the contaminated site from which the PCS originated and the spill or underground storage tank (UST) registration number shall be recorded.

b. *Type classification.* The PCS shall be classified by type according to the petroleum product’s trade name (e.g., gasoline, diesel fuel) or according to the trade names if there is a mixture of petroleum products.

c. *Chemical testing.* A sample of the PCS shall be obtained from the emergency cleanup site and tested pursuant to paragraph 120.6(2) “c.”

120.6(2) Other cleanups. PCS not originating from a department-supervised emergency cleanup pursuant to subrule 120.6(1) shall be characterized and tested as follows before being landfarmed. PCS originating from a cleanup pursuant to 567—Chapter 135 may utilize those test results as applicable.

a. Source identification. The name and address of the contaminated site from which the PCS originated, the UST registration number, and the leaking underground storage tank (LUST) number shall be recorded, if applicable.

b. Type classification. The PCS shall be classified by type according to the petroleum product's trade name (e.g., gasoline, diesel fuel) or according to the trade names if there is a mixture of petroleum products.

c. Chemical testing. The following analyses shall be performed. Samples shall be acquired, stored, handled, tested, and reported in accordance with the required methodology and accepted scientific procedures.

(1) BTEX testing. The PCS shall be tested for benzene, toluene, ethylbenzene, and xylene (BTEX). A laboratory certified for UST petroleum analyses pursuant to 567—Chapter 83 shall test the samples. The analysis shall utilize the most recent version of Method OA-1 (GCMS), "Method for Determination of Volatile Petroleum Hydrocarbons (Gasoline)," University of Iowa Hygienic Laboratory.

(2) TEH-diesel testing. The PCS shall be tested for total extractable hydrocarbons (TEH-diesel). A laboratory certified for UST petroleum analyses pursuant to 567—Chapter 83 shall test the samples. The analysis shall utilize the most recent version of Method OA-2, "Extractable Petroleum Products (and Relatively Low Volatility Organic Compounds)," University of Iowa Hygienic Laboratory.

(3) MTBE testing. The PCS shall be tested for methyl tertiary-butyl ether (MTBE) unless prior analysis at a site, pursuant to rule 567—135.15(455B), has shown that MTBE is not present in soil or groundwater. A laboratory certified for UST petroleum analyses pursuant to 567—Chapter 83 shall test the samples. The analysis shall utilize one of the following methods:

1. The most recent version of Method OA-1 (GCMS), "Method for Determination of Volatile Petroleum Hydrocarbons (Gasoline)," University of Iowa Hygienic Laboratory.

2. U.S. Environmental Protection Agency (EPA) Method 8260B, SW-846, "Test Methods for Evaluating Solid Waste," Third Edition.

(4) Total metals testing. If the history of the petroleum contaminated site is known to have included solvents, batteries, leaded fuel, waste oil, or a gas station in operation prior to 1985, then the PCS shall be tested for total Resource Conservation and Recovery Act (RCRA) metals.

120.6(3) Tar balls. PCS that has the potential to produce tar balls shall not be landfarmed. Such PCS may be disposed of in a sanitary landfill pursuant to 567—Chapter 109.

120.6(4) Other tests. The department may require testing of the PCS for other chemicals of concern. [ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.7(455B) Site exploration and suitability requirements for landfarms. All landfarms shall meet the following site exploration and suitability requirements.

120.7(1) Previous use. If a site is to be used as a landfarm, then the landfarm applicator shall obtain written confirmation from the site owner of one of the following requirements:

a. That any other landfarm created in the past three years within 15 feet of the proposed landfarm plot has been closed pursuant to rule 567—120.12(455B).

b. That no area within 15 feet of the proposed landfarm plot has been used as a landfarm in the past three years.

120.7(2) Wells. PCS shall not be landfarmed or stored within 500 feet of a well that is being used or could be used for human or livestock consumption. The department may also exempt from this requirement extraction wells utilized as part of a remediation system. PCS shall not be landfarmed or stored within 500 feet of an agricultural drainage well.

120.7(3) Sinkholes. PCS shall not be landfarmed or stored within 500 feet of a sinkhole.

120.7(4) Surface waters of the state. PCS shall not be landfarmed or stored within 200 feet of a stream, lake, pond, wetland, or other surface water of the state. The department may waive the setback requirement for surface waters that have been constructed for pollution control purposes.

120.7(5) *Tile lines.* PCS shall not be landfarmed or stored within 200 feet of a tile line surface intake.

120.7(6) *Housing and sensitive populations.* PCS shall not be landfarmed or stored within 200 feet of an occupied residence, recreational area, child care facility, educational facility, or health care facility.

120.7(7) *Flood plains.* PCS shall not be landfarmed or stored within the 100-year flood plain.

120.7(8) *Slope.* PCS shall not be landfarmed or stored on slopes greater than 5 percent. This requirement may be satisfied by utilizing United States Department of Agriculture (USDA) soil maps.

120.7(9) *Soil properties for landfarm plot.* All soils in the landfarm plot of the landfarm shall comply with the following requirements:

a. USDA textural soil classification. Soils in the landfarm plot of landfarms shall be clay, sandy clay, sandy clay loam, sandy loam, silty clay, silt clay loam, clay loam, loam, or silt loam as classified by the USDA Textural Classification Chart for soils.

b. Stones and debris. Soils in the landfarm plot shall be free of stones and debris larger than 4 inches in diameter.

c. Soil pH. Soils in the landfarm plot shall have a pH greater than or equal to 6 and less than or equal to 9.

d. Bedrock separation. The landfarm plot shall have a minimum of 6 feet of soil over bedrock.
[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.8(455B) Landfarm design requirements.

120.8(1) *Requirements for all landfarms.* All landfarms shall comply with the following design requirements:

a. PCS storage areas. Storage areas for PCS shall be constructed in compliance with the following requirements:

- (1) Over an impervious surface (e.g., tarp, concrete pad, plastic sheeting).
- (2) Under a roof or tarp to minimize the infiltration of precipitation.
- (3) In an area with minimal potential for stormwater run-on.

b. Flagging. The landfarm plot(s) upon which PCS is land applied shall be flagged pursuant to subrule 120.9(7).

120.8(2) *Additional requirements for multiuse landfarms.* Rescinded IAB 4/19/23, effective 5/24/23.

[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.9(455B) Landfarm operating requirements. All landfarms shall comply with the following operating requirements:

120.9(1) *Standard PCS.* Only standard PCS may be land applied or stored at a landfarm without a permit amendment from the department. A permit amendment from the department, pursuant to subrule 120.4(10), shall be obtained for each particular source and type of nonstandard PCS before that PCS may be land applied or stored at a landfarm. The permit amendment application shall include a justification of how the PCS can be safely and effectively remediated by landfarming.

120.9(2) *Saturated or slurry PCS.* PCS in a saturated or slurry condition shall not be applied to the land or stored at a landfarm. PCS in such a condition shall be bulked with other biodegradable materials (e.g., compost, mulch) until it is no longer saturated or in a slurry before it is applied to the land or stored at a landfarm.

120.9(3) *PCS delivery and storage.* Only PCS that is from an emergency cleanup may be delivered during the non-landfarm season. PCS delivered during non-landfarm season may be stored as follows until the conditions of subrule 120.9(4) are satisfied or within the first seven days of landfarm season, whichever is shorter. PCS that cannot immediately be applied to the land at the landfarm during landfarm season may be stored at the landfarm as follows.

a. Seven days or less. PCS may be stored up to seven days in compliance with the following requirements:

- (1) Over an impervious surface (e.g., tarp, concrete pad, plastic sheeting).
- (2) Under a roof or tarp to minimize the infiltration of precipitation.
- (3) In an area with minimal potential for stormwater run-on.

b. Extended storage time. No PCS shall be stored longer than seven days during landfarm season without written permission from the department field office that has jurisdiction over the landfarm.

120.9(4) PCS application weather and landfarm season.

a. PCS shall only be applied to the land during non-landfarm season if the PCS must be applied to the land as part of an emergency cleanup supervised by the department pursuant to subrule 120.6(1), or all of the following conditions exist:

- (1) The landfarm plot is free of snow.
- (2) The slope of the landfarm plot is less than 3 percent.
- (3) The PCS is incorporated into the soil as soon as site conditions allow.

b. PCS shall not be applied to the land during precipitation.

120.9(5) One application, source and type of PCS per plot. One application of a particular source and type of PCS may be applied to a landfarm plot. A landfarm may only apply a subsequent application of PCS to a previously utilized landfarm plot if such application is in compliance with the following:

a. The plot has been tested pursuant to subparagraphs 120.6(2)“c”(1), (2), and (3), and the results demonstrate that petroleum constituent concentrations are less than 0.54 mg/kg for benzene, 42 mg/kg for toluene, 15 mg/kg for ethylbenzene, 3800 mg/kg for TEH-diesel, and 0.02 mg/kg for MTBE.

b. A subsequent application of a particular source and type of PCS may not be applied within 15 feet of an area used as a single-use landfarm until the single-use landfarm is closed pursuant to subrule 120.12(2).

120.9(6) PCS application rates. PCS shall be land applied at a rate that is as uniform as practical over an area sufficient to satisfy the greater of the following area requirements. However, PCS from an emergency cleanup supervised by the department pursuant to subrule 120.6(1) may instead be land applied at a rate of 162 ft² of landfarm area per cubic yard (yd³) of PCS, that is as uniform as practical, and in which no layer of unincorporated PCS is thicker than 2 inches.

a. Petroleum constituents. PCS shall be land applied over the largest area required by the following:

(1) Benzene. PCS contaminated with benzene shall be land applied in accordance with Table 1. The average concentration of benzene in the PCS shall be used to determine the landfarm area (ft²) required per cubic yard (yd³) of PCS to be land applied. The average concentration of benzene shall be calculated from all soil boring test results that are within the PCS excavation area. The application shall be as uniform as practical over the area required.

Average concentration of benzene (mg/kg)	Ft ² of landfarm area per yd ³ of PCS applied	Maximum thickness of unincorporated PCS	Yd ³ of PCS per acre of landfarm
0 < mg/kg ≤ 10	81 ft ²	4 inches	537 yd ³
10 < mg/kg ≤ 20	162 ft ²	2 inches	268 yd ³
20 < mg/kg	324 ft ²	1 inch	134 yd ³

(2) Toluene, ethylbenzene, xylene, and TEH-diesel. PCS that is not contaminated with benzene or MTBE, but is contaminated with toluene, ethylbenzene, xylene, TEH-diesel, or some combination thereof, shall be land applied at a rate of 81 ft² of landfarm area per cubic yard (yd³) of PCS. The application shall be as uniform as practical, and no layer of unincorporated PCS shall be thicker than 4 inches.

b. Total heavy metals. PCS that has been tested for heavy metals pursuant to subparagraph 120.6(2)“c”(4) shall be applied at a rate that is as uniform as practical, that results in no layer of PCS thicker than 4 inches, and that upon incorporation produces a landfarm soil that satisfies the following requirements. This analysis requires prior testing of background levels of heavy metals at the proposed landfarm site.

(1) Total heavy metals are less than 2,500 milligrams per kilogram (mg/kg).

(2) Any particular concentration of a heavy metal is less than the appropriate statewide standard for soil developed pursuant to 567—Chapter 137.

120.9(7) *Flagging.* The landfarm plot(s) upon which PCS is land applied shall be flagged for one year after land application or until the landfarm is closed pursuant to rule 567—120.12(455B), whichever is shorter.

120.9(8) *Removal of solid waste and rubble.* All solid waste that is not PCS (e.g., pipe) shall be removed and properly disposed of. All rubble, stones, and debris larger than 4 inches in diameter, or that interfere with incorporating and turning the PCS, shall be removed and properly disposed of.

120.9(9) *PCS incorporation.* PCS shall be incorporated into the soil by tilling, disking, or other suitable means within 48 hours of being land applied or before the next precipitation event, whichever is sooner. PCS shall not be incorporated deeper than 12 inches.

120.9(10) *Turning the PCS.* After incorporation, the PCS shall be turned by tilling, disking, or other suitable means at least once per month for the first three months during landfarm season.

120.9(11) *No crops for consumption.* Landfarms shall not grow crops within 15 feet of a landfarm plot that is flagged pursuant to subrule 120.9(7). Crops for human and livestock consumption may be grown at a single-use landfarm after the landfarm plot is no longer required to be flagged pursuant to subrule 120.9(7).

120.9(12) *Removal of PCS from a landfarm.* PCS shall not be removed from a landfarm until the landfarm is closed pursuant to rule 567—120.12(455B) or the following conditions are met:

a. One sample from each 2,500 ft² (e.g., 50-foot × 50-foot area) of landfarm plot is analyzed pursuant to subparagraphs 120.6(2) “c”(1), (2), and (3). A minimum of one sample per landfarm plot shall be obtained. All samples shall be obtained from between the top 2 to 6 inches of soil.

b. The results of the tests in paragraph 120.12(2) “a” demonstrate that petroleum constituent concentrations for benzene, toluene, ethylbenzene, TEH-diesel, and MTBE are below the detection limits required by 567—Chapter 135.

c. Records of the lab results, amount of PCS removed, and the exact final location of the PCS shall be maintained by the landfarm.

[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.10(455B) Emergency response and remedial action plans.

120.10(1) *Access.* Emergency response and remedial action plan (ERRAP) documents shall be readily available. Landfarm applicators shall have employees carry a copy of the ERRAP document to each site where operations are taking place.

120.10(2) *Updates.* An updated ERRAP shall be included with any request for permit modification to incorporate a facility or operational change that requires modification of the currently approved ERRAP.

120.10(3) *Employee training.* At a minimum, all employees shall receive annual training sufficient to understand and utilize ERRAP documents.

120.10(4) *Content.* The content of ERRAP documents shall be concise and readily usable as a reference manual by facility managers and operators during emergency conditions. The ERRAP document content shall address at least the following primary issues in detail, unless project conditions render the specific issue as not applicable. The rationale for exclusion of any issue areas that are not applicable must be provided either in the body of the plan or as a supplement. Additional ERRAP requirements unique to the facility shall be addressed as applicable.

a. *Facility information.*

- (1) Permitted agency.
- (2) DNR permit number.
- (3) Responsible official and contact information.
- (4) Project location.
- (5) Facility description.
- (6) Site and environs map.

b. *Weather-related events.*

- (1) Intense rainstorms and erosion.
- (2) Intense rainstorms or flooding impacting site access and usability.

c. Fire and explosions.

- (1) Flammable PCS.
- (2) Buildings on site.
- (3) Equipment.
- (4) Waste gases from PCS.
- (5) Off-site fires or explosions at cleanup site or during transport.

d. Spills and releases.

- (1) Saturated or slurry PCS.
- (2) Free liquids from stored PCS.
- (3) Spill of PCS during transport.

e. Hazardous materials.

- (1) Hazardous waste delivery.
- (2) Hazardous gases.

f. Emergency, spill and release notification and reporting.

- (1) Emergency response agencies.
- (2) Federal agencies.
- (3) State agencies.
- (4) County and city agencies.
- (5) Special populations near site.
- (6) Reporting requirements and forms.
- (7) News media.

g. Primary emergency equipment inventory.

- (1) Major equipment.
- (2) Fire hydrants and water sources.
- (3) Off-site equipment resources.

h. ERRAP training requirements.

- (1) Training providers.
- (2) Employee orientation.
- (3) Annual training updates.
- (4) Training completion and record keeping.

[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.11(455B) Reporting and record-keeping requirements.

120.11(1) Reporting. The following information shall be submitted to the department on a form provided by the department. All reporting submissions shall include the name, address, and telephone number of the landfarm and permit holder, as well as the permit number.

a. Storage notification. Landfarms shall submit the following information to the department and department field office with jurisdiction over the landfarm before receipt of the PCS for storage; however, at least 30 days' notification is encouraged. PCS storage information from an emergency cleanup supervised by the department pursuant to subrule 120.6(1), however, shall be reported within 7 days of the emergency cleanup.

- (1) The date the PCS is expected to be delivered for storage at the landfarm.
- (2) Where the PCS will be stored at the landfarm.
- (3) The spill number, UST registration number, and LUST number, as applicable.

b. Land application notification. Landfarms shall submit the following information to the department and department field office with jurisdiction over the landfarm before land application; however, at least 30 days' notification is encouraged. PCS information from an emergency cleanup supervised by the department pursuant to subrule 120.6(1), however, shall be reported within 7 days of the emergency cleanup.

(1) The date the PCS is expected to be applied to the land. If the PCS is not applied on this date, the department shall be informed of the actual application date.

(2) A physical address or parcel identification number for the landfarm location, a legible topographic map or aerial photo, a USDA soil map with key, and a map of the 100-year flood plain illustrating and labeling where the PCS is to be applied.

(3) Application rate calculations pursuant to subrule 120.9(6).

(4) The spill number, UST registration number, and LUST number, as applicable.

c. PCS analysis and characterization. Information on the analysis and characterization of the PCS pursuant to rule 567—120.6(455B) shall be submitted to the department before receipt of the PCS for storage or land application; however, at least 30 days' notification is encouraged. PCS analysis and characterization information from an emergency cleanup supervised by the department pursuant to subrule 120.6(1), however, shall be reported within 60 days of the emergency cleanup.

120.11(2) Record keeping. All landfarm applicators shall maintain records of all information related to compliance with this chapter and the permit throughout the life of the landfarm and for three years after landfarm closure pursuant to rule 567—120.12(455B). This information shall be available to the department upon request. Applicable information includes, but is not limited to, the following material.

a. Permit application information pursuant to rule 567—120.5(455B).

b. PCS analysis and characterization pursuant to rule 567—120.6(455B).

c. Site suitability information pursuant to rule 567—120.7(455B).

d. Specific design requirements pursuant to rule 567—120.8(455B).

e. Operations information pursuant to rule 567—120.9(455B); in particular, application rate calculations pursuant to 120.9(6).

f. ERRAP documents pursuant to rule 567—120.10(455B).

g. Reports submitted pursuant to subrule 120.11(1).

h. Closure information pursuant to rule 567—120.12(455B).

[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.12(455B) Landfarm closure. Unless otherwise required or approved by the department, landfarms shall be closed in one of the following ways:

120.12(1) Three years after the application of PCS, or

120.12(2) At least six months after the application of PCS when documentation has been submitted and acknowledged in writing by the department that each landfarm plot has been tested as follows.

a. One sample from each 10,000 ft² (e.g., 100-foot × 100-foot area) of landfarm plot is analyzed pursuant to subparagraphs 120.6(2) “c”(1), (2), and (3). A minimum of one sample per landfarm plot shall be obtained. All samples shall be obtained from between the top 2 to 6 inches of soil.

b. The results of the tests in paragraph 120.12(2) “a” demonstrate that petroleum constituent concentrations are less than 0.54 mg/kg for benzene, 42 mg/kg for toluene, 15 mg/kg for ethylbenzene, 3800 mg/kg for TEH-diesel and 0.02 mg/kg for MTBE.

[ARC 6982C, IAB 4/19/23, effective 5/24/23]

567—120.13(455B,455D) Financial assurance requirements for landfarms. The holder of a sanitary disposal project permit for a landfarm must obtain and submit a financial assurance instrument to the department in accordance with this rule. The financial assurance instrument shall provide monetary funds for the purpose of conducting closure activities at the landfarm plot(s) due to the permit holder's failure to properly close the site as required in accordance with rule 567—120.12(455B) within 30 days of permit suspension, termination, revocation, or expiration.

120.13(1) No permit without financial assurance. The department shall not issue or renew a permit to an owner or operator of a landfarm until a financial assurance instrument has been submitted to and approved by the department.

120.13(2) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted at the time of application for a permit for a landfarm applicator permit. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

120.13(3) *Financial assurance amounts required.* The estimate submitted to the department must be certified by a professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 567—120.12(455B):

a. Third-party costs to conduct soil sampling and properly clean all equipment and storage areas at the landfarm plot(s).

b. If PCS is temporarily stored on site prior to incorporation, then this estimate shall include third-party labor and transportation costs and total tip fees to properly dispose of all PCS equal to the maximum storage capacity on site.

120.13(4) *Acceptable financial assurance instruments.* The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 120.13(3) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

a. Secured trust fund. The owner or operator of a landfarm or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the landfarm sites, and a copy of the trust agreement must be submitted to the department and placed in the permit holder's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned entity permitted to landfarm PCS or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the landfarm site(s).

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the permit holder's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular landfarm owner or operator for the purpose of funding closure in accordance with rule 567—120.12(455B) and removing any stockpiled PCS that may remain at the site(s) due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the permit holder's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the permit holder and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the permit holder's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 120.13(4) "a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a landfarm site(s) covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 120.13(4) "a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or
2. A ratio of less than 1.5 comparing total liabilities to net worth; or
3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the permit holder's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.
2. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 120.13(3); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

- Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 120.13(4)“e”(2), (3) and (4).

3. A copy of the independent certified public accountant’s unqualified opinion of the guarantor’s financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor’s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner’s or operator’s failure to perform closure of a landfarm site(s) covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 120.13(4)“a” in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody’s, or AAA, AA, A, or BBB, as issued by Standard & Poor’s, on all such general obligation bonds; or
2. The guarantor must satisfy each of the following financial ratios based on the guarantor’s most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and must have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or
2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody’s or BBB as issued by Standard & Poor’s; or
3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or
5. The closure costs to be assured are greater than 43 percent of the guarantor’s total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial application of PCS at the landfarm site(s) or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular site(s), the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the landfarm site(s).

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 120.13(4) "f"(2)"2," if applicable, and the requirements of subparagraphs 120.13(4) "f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 120.13(3); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 120.13(4) "f"(2), (3), (4) and (5).

120.13(5) *Financial assurance cancellation and permit suspension.*

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, "proper closure" means completion of all items pursuant to rule 567—120.12(455B) and subrule 120.13(3).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy. [ARC 6982C, IAB 4/19/23, effective 5/24/23]

These rules are intended to implement Iowa Code sections 455B.301A, 455B.304 and 455B.383.

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