

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:

<u>Years for Which Financial Responsibility Not Demonstrated</u>	<u>Per-Tank Reinstatement Fee</u>
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.