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June 1, 2017

Waiver approved as requested  
s/Janet E. Phipps/  
06/01/2017

*VIA E-MAIL*

Janet Phipps, Director  
Iowa Department of Administrative Services  
Hoover State Office building  
LOCAL

Re: Request for Waiver pursuant to 11 Iowa Admin. Code 118.16

Dear Director Phipps:

I am general counsel to the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ("Fund Board"), and am writing on behalf of the Fund Board to request an order waiving the six-year limitation for service contracts (11 Iowa Admin Code. 118.11(3)) regarding its contracts with Seneca Environmental Services, Inc. and Barker Lemar Engineering Consultants. (Both contracts are attached hereto). On May 16, 2016, Governor Branstad signed legislation eliminating allocations to the UST Fund effective December 31, 2016. The final extension of the contracts for Seneca and Barker Lemar entered on September 1, 2011 will expire on August 30, 2017—exhausting the maximum duration for service contracts contained in section 118.11(3). (The final extensions are attached). Under the circumstances, the Fund Board believes good cause is established for waiving the six-year limitation in the rule to allow Seneca and Barker Lemar to continue performing services for the UST Fund as the Board prepares and implements a plan for terminating the UST Fund program.

Since 1997, the Board and the Iowa Department of Natural Resources have entered multiple 28E agreements to facilitate work at select leaking underground storage tank sites using Board-administered contracts for tank closure activities, environmental assessments, and limited corrective action work to remove petroleum contamination from the environment. To date, work has been performed on more than 300 sites with costs incurred near \$4 million. Under the contracts with Seneca and Barker Lemar, work has been performed or attempted on more than 125 sites, while 57 sites have attained regulatory closure and 45 sites remain open today. Further work will be needed on these remaining open sites, and it is expected that even more sites are candidates for a similar project.

Without any funding after December 31, 2016, the Fund Board is currently tasked with winding down its business with a goal to eventually terminate the program. While no timetable has been developed for closing the program, it is estimated the process may take one to two years to accomplish. On June 6, 2016, you granted a variance from the six-year limitation rule until December 31, 2018, for the Board's contract with the third-party administrator for the UST

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Fund. It is the position of the Fund Board that a similar variance is also appropriate for the Fund Board's contracts with Seneca and Barker Lemar. The Fund Board believes these two contractors are the only service providers with the specialized knowledge, expertise and experience to efficiently and effectively continue the ongoing work needed on the 45 open sites as the Fund Board winds down its program. To delay the work being performed by these contractors in order to seek competitive bids will increase operational costs for the UST Fund, create uncertainty about the status of the 45 remaining sites at a critical time, and will stall necessary actions required to progress these sites toward closure before the UST Fund program terminates.

Because waiving the six-year duration for service contracts under the circumstances is more practical, economical and efficient than the alternatives, the Fund Board requests a waiver of the application of 11 Iowa Admin. Code 118.11 to its contracts with Seneca and Barker Lemar to up to and including December 31, 2018, to allow those contractors to continue assessment and remedial activities under the current contracts while the Board prepares to terminate its operations. Please contact me if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "David S. Steward", written in a cursive style.

DAVID S. STEWARD  
Assistant Attorney General

Enclosures