

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: BECK OIL COMPANY OF IOWA, L.C. LUST NO. 7LTY31 UST NO. 198607679	ADMINISTRATIVE CONSENT ORDER NO. 2007-UT-01
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**TO: Beck Oil Company of Iowa, L.C.
Bill Smith
850 E. Thompson St.
Princeton, IL 61356**

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Beck Oil Company of Iowa, L.C. enter into this order for the purpose of resolving regulatory violations and monetary penalties associated with the ownership and operation of petroleum underground storage tanks (USTS) located at 1531 Ave. H, Ft. Madison, Iowa. In the interest of avoiding litigation, the parties have agreed to the terms as provided below.

- Complete repairs and testing on the UST which failed the corrosion protection testing and submit the repair documentation no later than April 1, 2007. Re-test the corrosion protection and submit results to the Department no later than October 1, 2007.
- Submit monthly leak detection results to the Department's field office by the 15th of each following month for a period of six months.
- Pay to the order of the "Iowa Department of Natural Resources" a penalty of \$6,759.00, no later than April 1, 2007.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Terry Jones, Field Office 6
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, IA 50022
Ph. 712/243/1934

Relating to legal issues:
David Womson, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
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II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director to issue any order necessary to secure compliance with Iowa Code Division IV, Part 8 and Department rules contained in Chapter 567 Iowa Administrative Code (I.A.C.) 135. Iowa Code sections 455B.109 and 455B.476 and agency rules in Chapter 567 I.A.C. 10 authorize the Director to assess administrative penalties up to \$10,000.00.

III. STATEMENT OF FACTS

1. Beck Oil Company of Iowa, L.C. (Beck Oil) is registered with the Department as the owner of four petroleum underground storage tanks (USTS) used for the storage and dispensing of gasoline and diesel fuel and is located at 1531 Ave. H, Ft. Madison, Iowa. Three of the USTS are constructed of steel and the fourth is constructed of a composite material. Beck Oil is also the owner of the property located at 1531 Ave. H., Ft. Madison, Iowa (facility).
2. The Department field office conducted a routine compliance inspection of the facility on June 6, 2006. The inspector found that (1) sufficient operation and maintenance records were not available onsite; (2) the ICON automatic tank gauge (ATG) was set up to perform leak detection at a 90% probability of detection rather than the required 95% detection probability standard; (3) the required 3-year corrosion protection testing had not been performed on 2 of the 3 steel tanks; (4) the no lead plus UST ATG records showed leak detection failures for 7 of the past 12 months; and (5) monthly leak detection on the USTS was not being conducted at the minimum acceptable levels and levels to which the tanks are routinely filled.
3. The Department inspector issued a notice of violation dated June 15, 2006 to Beck Oil to the attention of Daryl Becker and enclosed an inspection report. The notice required that (1) the ATG be reprogrammed to the 95% detection probability standard and Beck Oil test all USTS; (2) Beck Oil conduct the 3-year corrosion protection tests on the steel USTS which had not been tested within the past 3 years; and (3) Beck Oil submit the documentation of reprogramming, leak testing and corrosion protection tests by July 15, 2006.
4. The Department did not receive the required documentation by July 15, 2006 and a second notice of violation was sent to Beck Oil and Daryl Becker dated August 3, 2006. The notice established a submittal deadline of August 15, 2006.
5. The Department did not receive the required documentation by August 15, 2006 and issued a third notice of violation dated October 24, 2006. A submittal deadline of November 10, 2006 was established with no further extensions.
6. The Department did not receive the required documentation by November 10, 2006. On November 30, 2006, the inspector left a telephone voice message with Daryl Becker advising him of the missed deadline.

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7. On December 7, 2006, the Department received ATG leak tests for the 4 USTS conducted on December 7, 2006 but did not receive documentation that the ATG had been reprogrammed or the 3-year corrosion protection tests had been conducted as previously requested.

8. The Department issued a fourth notice of violation dated December 14, 2006 to Beck Oil and Daryl Becker which advised them the matter was being referred for further legal enforcement. The notice further required that the following documentation be submitted (1) ATG leak detection results for the period June 6, 2006 through December 26, 2006; (2) leak detection repairs/calibrations performed in the past 6 months and (3) a copy of the most recent line and line leak detector tests. The notice required submittal of the documentation by December 26, 2006.

9. The Department received a packet of documentation from Beck Oil on December 21, 2006. The packet included 6 months of ATG leak detection results, documentation of recalibration to the ATG to the 95% standard, an explanation that a software replacement was necessary to get passing test results for the no lead plus UST, and information that the 3-year corrosion protection testing was scheduled for the week of January 8, 2007.

10. On January 19, 2007, the Department received the 3-year corrosion protection tests and line and line leak detector tests completed on December 28, 2006. The annual line and line leak detector tests were due in September 2006. The corrosion protection tests showed the unleaded UST did not meet minimum testing criteria.

11. The Department issued a notice of violation for failure to conduct the annual line and line leak detector tests by the annual deadline of September 2006 and required Beck Oil to repair the failed corrosion protection system by April 1, 2007 and retest it within 6-months as required by rule. The results of the corrosion protection repair and tests were to be submitted upon completion.

IV. CONCLUSIONS OF LAW

1. ~~Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471 - 455B.479)~~ establishes the (UST) program. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules in Chapters 567 I.A.C. 135 and 136.

2. Iowa Code section 455B.471(6) defines "owner" of USTS. Beck Oil is an owner as defined and responsible for compliance with the terms of this order.

3. Petroleum or its constituent parts is a "regulated substance" as defined in Iowa Code section 455B.471(8) and the USTS at this facility are regulated pursuant to Iowa Code section 455B.474 and implementing rules of the Commission in chapter 567 I.A.C. 137.

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4. Pursuant to 567 I.A.C. 135.5(1), owners and operators of new and existing UST systems must provide a method or combination of methods of release detection that (1) can detect a release from any portion of the tank and the connected underground piping that routinely contains product, (2) is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and (3) meets the performance requirements in 567 I.A.C. 135.5(4) or 135.5(5). Beck Oil and Daryl Becker (named parties) violated these rules by allowing the ATG to operate with defective software that was producing failed leak detection results without timely investigating and repairing the system.

5. Paragraph 567 I.A.C. 135.5(1)"a" requires that leak detection methods be capable of detecting a leak with a probability of detection of 95% and a probability of a false alarm of 0.05. Pursuant to 567 I.A.C. 135.5(4)"d" equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements: the automatic product level monitor test can detect a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product and the inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of 567 I.A.C. 135.5(4)"a." The named parties violated these rules by allowing the ATG to be operated at a 90% detection probability standard.

6. Pursuant to 567 I.A.C. 135.4(5) owners and operators of UST systems must cooperate fully with inspections, monitoring and testing by the Department and requests for document submission, testing and monitoring. Records must be kept onsite or at a readily available site and made available upon request. Readily available has been generally understood to mean records must be maintained such that they can be produced in two business days. See 567 I.A.C. 135.4(5)"c". Owners and operators must maintain the following records:

- a. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used. (135.4(5)"b"(1)).
- b. Records of tank and piping construction sufficient to establish compliance with corrosion protection rules and documentation of operation of applicable corrosion protection equipment. ~~(135.4(5)"b"(2)).~~
- c. Documentation of UST system repairs. (135.4(5)"b"(3)).
- d. Recent compliance with leak detection requirements. (135.4(5)"b"(4)).
 1. Release detection monitoring, maintenance and repair, and calibration records must be maintained for at least the past 12 months.
 2. All written performance claims pertaining to the release detection system must be kept for a minimum of 5 years or another time determined by the Department.
 3. Tank tightness tests must be maintained until the next test. See 567 I.A.C. 135.5(6).
- e. Documentation of compliance with UST closure rules. (135.4(5)"b"(5)).
- f. Proof of financial responsibility. (136.20).

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7. Pursuant to 567 I.A.C. 135.4(2)"b", corrosion protections systems must be inspected and tested by a qualified tester within 6-months of installation and every 3 years thereafter. Cathodic protection systems which are repaired must be re-tested within six months of the repairs. The named parties failed to timely conduct the required 3-year corrosion protection test.

8. UST piping that routinely contains product under pressure must be equipped with an automatic line leak detector and have an annual line tightness test conducted or be subject to monthly monitoring. Annual line tightness testing is the method used at this facility. See 567 I.A.C. 135.5(2)"b". Line leak detectors must be tested annually. See 567 I.A.C. 135.5(5)"a". The named parties failed to timely conduct line tightness tests and line leak detector tests.

9. The named parties have violated the above referenced rules by (1) failure to timely conduct a 3-year corrosion protection test; (2) failure to conduct adequate monthly leak detection due to improper calibration of the ATG, use of an ATG system with defective software that produced failed results, and failure to test at the minimum product levels and levels to which the USTs are routinely filled; and (3) failure to timely conduct annual line leak detector and line tightness testing.

V. ORDER

THEREFORE, Beck Oil agrees to comply with the following provisions:

1. Complete repairs and testing on the UST which failed the corrosion protection testing and submit the repair documentation no later than April 1, 2007. Re-test the corrosion protection and submit results to the Department no later than October 1, 2007.
2. Submit monthly leak detection results to the Department's field office by the 15th of each following month for a period of six months.
3. Pay to the order of the "Iowa Department of Natural Resources" a penalty of \$6,759.00, no later than April 1, 2007.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5000.00 per day for the violations as described in this order.
2. Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule for assessment of administrative penalties up to \$10,000.00. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See Chapter 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is through a negotiated administrative consent order with a penalty. The penalty rationale is summarized below:

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ECONOMIC BENEFIT: Beck Oil has gained an economic benefit due to the delay in taking corrective measures to repair the defective ATG, conduct annual line tightness tests, annual leak detector tests, and complete a timely 3-year corrosion protection test and undertake necessary repairs. This benefit is measured by the interest earned on the cost of compliance over the period of non-compliance. An annual interest rate of 8% or .8% per month is used. The estimated cost of installing a new software program is \$1,200.00. Indications that the ATG was not functioning properly occurred as far back as December 2005. New software was installed in August 2006. The ATG should have been repaired at least by January 2006. Therefore the benefit is calculated as $\$1,200.00 \times .008 \times 8 \text{ months} = \76.80 (rounded to \$77).

The 3-year corrosion protection test was due no later than March 3, 2006. It was not completed until December 28, 2006, 9 months overdue. The estimated cost of the test is \$400.00. The corrosion protection test conducted in December 2006 showed a failure and will require repairs which could cost \$4,000.00. Had the test been conducted in March 2006, the repairs would have been required to be completed at least by April 2006. Assuming Beck Oil will complete the repairs, the delayed cost of compliance is estimated at $\$4,400.00 \times .008 \times 8 \text{ months} = \281.6 (rounded to \$282).

The line leak detector testing was 3 months overdue and the economic benefit due to the delay is nominal. There is also a cost associated with maintaining records and compliance management. The cost of avoiding this obligation is estimated to be \$400.00. The total economic benefit is assessed at \$759.00.

GRAVITY: Failure to operate reliable leak detection is considered a major violation since it is essential to the leak prevention and detection program. The failure to respond to failed readings and operating at less than the detection probability standard constitutes a major deviation from the expected standard for compliance. The corrosion protection test was about 9 months overdue and resulted in a failure for one tank requiring repairs. This increases the risk of a catastrophic leak. The line tightness tests and leak detector testing was also 3 months overdue. For this factor, \$3,000.00 is assessed.

~~**CULPABILITY:** The named parties had sufficient knowledge that the ATG system was not operating properly at least 7 months prior to the inspection. After the Department's inspection, the named parties failed to provide records and satisfy obligations after numerous notices and warnings. This is evidence of grossly negligent or intentional action. For this factor, \$3,000.00 is assessed.~~