

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: JACK KNUDSON IUST NO. 7LTG72 UST NO. 198600632	ADMINISTRATIVE CONSENT ORDER NO. 2007-UT-03
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TO: Gailard Knudson
201 Ellen St
P.O. Box 107
Irwin, IA 51446

Jack Knudson
1922 Timber Road
P.O. Box 35
Irwin, Iowa 51446

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Jack Knudson enter into this agreement for the purpose of resolving regulatory violations and monetary penalties associated with the ownership and operation of petroleum underground storage tanks (USTS) located at 514 Bella Street, Irwin, Iowa. In the interest of avoiding litigation, the parties have agreed to the terms as provided below:

Jack Knudson is required to complete a Tier 1 and, if necessary, a Tier 2 site assessment in accordance with Department rules in Chapter 567 Iowa Administrative Code (I.A.C.) 135. The order also requires Jack Knudson to complete a UST closure soil and groundwater closure investigation unless it is incorporated into the Tiered Assessment. The required Tier 1 report is to be submitted to the Department no later than November 30, 2006.

You are required to pay an administrative penalty of \$10,000 subject to a reduction of the penalty in accordance to terms specified in Division V below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Tammy Vander Bloemen
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-8957

Relating to legal issues:

David Wornson, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-242-5817

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II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(10) and 455B.476, which authorize the Director to issue any order necessary to secure compliance with the Iowa Code Division IV, Part 8 and Department rules contained in Chapter 567 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.

III. STATEMENT OF FACTS

1. On December 12, 1985, Gailord Knudson, d/b/a Knudson Service Station, registered with the Department as the owner of two 560-gallon petroleum USTS located at 514 Bella St., Irwin, Iowa. Mr. Knudson signed the registration form as the authorized representative of Knudson Service Station. Knudson Service Station is not a registered corporation and it is unknown if it was a sole proprietorship, partnership or other business entity. Gailord Knudson and Helen Knudson were the owners of the property on which the USTS were located. Gailard Knudson, d/b/a Knudson Service Station, was the person in control of and having responsibility for the daily operation of the USTS.
2. On September 12, 1989, Jack Knudson submitted a tank closure notification form for two 560-gallon petroleum USTS to the Department. He was listed as the UST owner.
3. Jack Knudson registered as the owner of two 1,000-gallon USTS, which were installed on October 16, 1989.
4. On November 30, 1989, Department staff notified Gailard Knudson that during the tank removal of the two 560-gallon USTS petroleum contamination was identified. As such, the Department required him to conduct a site assessment to investigate the extent of contamination or in the alternative conduct an over excavation of the tank basin. The notice required submittal of a site assessment work plan.
5. On April 18, 1990, Department staff notified Gailard Knudson that the site assessment work plan had not been submitted and required submittal within the next ten days.
6. According to Shelby County Assessor's office, Jack Knudson purchased the property from his parents, Gailard and Helen Knudson, on August 7, 1990.
7. On September 28 1990, Howard R. Green Company submitted the site assessment work plan to the Department.
8. On September 30, 1990, the Department issued Administrative Order 90-UT-14 against Gailard Knudson d/b/a Knudson Service Station requiring them to submit a soil and groundwater investigation plan and implement it upon approval of the Department.
9. On November 21, 1990, the Department approved the site assessment work plan submitted by Gailard Knudson and required submittal of a site assessment report within 90 days.

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10. On March 15, 1991, Siouxland Environmental Services submitted two copies of a Site Assessment Report to the Department. Benzene concentrations were identified in groundwater above corrective action levels, EMW—260 ppb, B2—150 ppb, B1—38 ppb, B4—14 ppb.

11. On July 29, 1991, the Department notified Gailard Knudson that, based on the assessment submitted to the Department, additional information was needed, including five additional groundwater monitoring wells to determine the extent of contamination, by September 29, 1991.

12. On October 10, 1991, Siouxland Environmental Services requested a time extension for the site assessment until April 1992.

13. On October 30, 1991, the Department granted a time extension for submittal of a site assessment. The Department also informed Mr. Knudson that due to changes in statute, the Department was revising its site assessment rules. As such, further investigation is suspended until Departmental rules have been adopted.

14. On April 23, 1992, Siouxland Enviro/Petro Services Inc. submitted groundwater lab analysis to the Department from two borings. Laboratory results indicate that petroleum levels were below corrective action levels. Daniel O'Donnell, Siouxland Enviro/Petro Services, Inc., informed the Department that this submittal served as a supplement for the previously submitted assessment, not for the site assessment report required to be submitted by September 29, 1991.

15. On April 27, 1992, Department staff notified Gailard Knudson that a site cleanup report was to be submitted to the Department within 180 days. Mr. Knudson failed to submit a site cleanup report as directed.

16. On June 30, 1995, Department sent correspondence to Jack Knudson requiring proof of approved financial responsibility on the UST system or Certification of Temporary Closure to be submitted to the Department within the next 10 days.

17. On July 7, 1995, Department staff sent a copy of a facility inspection report to the facility address. Violations identified during the inspection included inadequate overfill protection, tank release detection and records and current tank tags not attached to fill pipes.

18. On July 25, 1995, Department staff sent a final notice to Jack Knudson to submit either proof of approved financial responsibility or Certification of Temporary Closure to the Department within the next 10 days.

19. On July 29, 1997, Department staff sent Jack Knudson a copy of the inspection report from the site inspection conducted June 16, 1997. The purpose of the inspection was to determine current status of the USTS. Mr. Knudson stated that he had emptied both tanks and removed the dispensers approximately one year ago and did not intend to use them again. Mr. Knudson failed to submit a Certification of Temporary Closure.

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20. By letter dated September 11, 1997, the Department again required Knudson Service Station to submit either proof of approved financial responsibility or Certification of Temporary Closure to the Department within the next 10 days.
21. By letter dated March 1, 1999, Department staff notified Jack Knudson that under existing rules, he was required to conduct a tiered site assessment. The notice required submittal of a Tier 1 site assessment within 90 days.
22. By letter dated July 7, 1999, the Department notified Jack Knudson that the tiered site assessment was overdue and must be submitted to the Department within 60 days.
23. On July 25, 1999, Department staff sent a final notice of violation for failure to submit a tiered assessment to the Department.
24. On May 15, 2000, Department staff sent Jack Knudson a final notice for a tiered assessment. The report was due within 10 days.
25. On September 18, 2000, the Iowa LUST Fund notified Jack Knudson that remedial benefits had been denied.
26. On October 28, 2003, Department staff sent correspondence to Jack Knudson notifying him to remove the two 1,000-gallon USTS by January 15, 2004 and complete a tank closure investigation.
27. On November 24, 2003, Jack Knudson phoned Department staff that the USTS would be removed in 2003. Department staff informed Jack Knudson that the Tier 1 is overdue and to collect UST closure soil and groundwater samples.
28. The Department has yet to receive a Tank Closure Report documenting tank removal and a tank closure soil and groundwater investigation or a tiered site assessment.

V. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471 - 455B.479) establishes the (UST) program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTS constitutes a threat to the public health and safety and to the natural resources of the state. 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 underground storage tanks. Gailord Knudson is an owner of two 560-gallon USTS as defined. Jack Knudson was the owner of two

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1,000-gallon USTS as defined and is responsible for compliance with the terms of this order applicable to those USTS.

3. Iowa Code section 455B.471(5) defines an "operator" of USTS as "... a person in control of, or having responsibility for, the daily operation of the underground storage tank." Jack Knudson was an operator of the two 560-gallon USTS as defined and responsible for compliance with the terms of this order. Jack Knudson was the operator of the two 1,000 gallon USTS and responsible for compliance with the terms of this order applicable to those USTS.

3. Petroleum or its constituent parts is a regulated substance as defined in Iowa Code section 455B.471(8). A "release" of a "regulated substance" has occurred at the site as defined in Iowa Code sections 455B.471(8) and (9).

4. Department rule 567 I.A.C. 135.15 requires that USTS which are temporarily closed for more than 12 months be permanently closed by removal or filling in place and that a soil and groundwater closure investigation be conducted. A tank closure report must be submitted to the Department.

5. Department rule 567 I.A.C. 135.14 establishes contaminant levels in soil and groundwater (corrective action standards) which, if exceeded, require owners and operators of USTS to conduct a Tier 1 site assessment in accordance with Department rules 135.8 et seq. Depending on the results of the Tier 1 analysis and certain specified conditions in the rules, parties may be required to conduct a more comprehensive Tier 2 site assessment. See 135.9(2) and 135.10. If free product is present at the site, a Tier 2 site assessment is required. See 135.10(1). A Tier 1 report is required to be submitted within 90 days of release confirmation. If a party elects to conduct a Tier 2 site assessment, the report is due within 180 days of release confirmation. See 567 I.A.C. 135.9(11).

5. All corrective action must be conducted by a certified groundwater professional in accordance with 567 I.A.C. 135.8(2).

6. Upon review of an acceptable Tier 1 or Tier 2 assessment report, the Department will approve a pathways and site classification in accordance with 567 I.A.C. 135.12. Based on the risk classification, further corrective action may be required.

7. Jack Knudson failed to submit a tiered assessment associated with the release from the two 560 gallon USTS. Jack Knudson has failed to submit a tank closure report and conduct a soil and groundwater closure investigation of the two 1,000 gallon USTS.

V. ORDER

THEREFORE, the Department orders and Jack Knudson agrees to:

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1. Provide the Department written notification of the certified groundwater professional retained for this project no later than October 22, 2007, including an enforceable contract which reasonably obligates a groundwater professional to complete a tank closure report and/or tiered site assessment.

2. Conduct a soil and groundwater UST closure investigation and submit a tank closure report in accordance with Department rule 567 IAC 135.14 documenting the permanent closure of the two 1,000 gallon USTS and associated piping. The closure report must be submitted to the Department no later than November 16, 2007. As an alternative to conducting a tank soil and groundwater investigation at the location of the former two 1,000 UST systems, you may incorporate the soil and groundwater closure sampling into a tiered site assessment or the two UST basins. However, a closure report must be submitted documenting the UST closure.

3. Conduct a Tiered Site Assessment in accordance with Chapter 567 I.A.C. 135 and submit a report to the Department no later than February 5, 2007. Soil and groundwater sampling must include the former UST excavation and piping areas for both the two 560-gallon USTS location and the two 1,000-gallon UST system location. If it is necessary to conduct a Tier 2 evaluation of the site, the Tier 2 report must be submitted no later than April 4, 2009.

3. Pay an administrative penalty of \$10,000 to the order of the "Iowa Department of Natural Resources" subject to the following conditions:

a. Upon timely compliance with the Tier 1 and if necessary a Tier 2 site assessment, the Department agrees to reduce the penalty by the amount of actual costs paid to complete the tiered site assessment and UST closure report. Mr. Knudson must provide invoices from a certified groundwater professional documenting those expenses. Any balance remaining after approval of the Tier 1 or Tier 2 report will be assessed as a penalty and become due 30 days after notice by the Department.

b. The Department reserves the right to enforce the full penalty amount or an amount reduced by actual expenses incurred for full or partial compliance with the above terms in the event Mr. Knudson fails to substantially comply with paragraphs 1-3 of this order.

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

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Consent Order with a penalty. Because the assessed penalty exceeds the statutory \$10,000 limitation, \$10,000 is assessed against Gailard Knudson and Jack Knudson jointly and severally.

ECONOMIC BENEFIT: The Department required that a tiered site assessment associated with the two 560-gallon USTS be conducted in March 1999. The tiered assessment report was due by June 1999. However, the Department has not received any site assessment. Additionally, in October 2003, the Department required that the two 1,000 gallon USTS be permanently closed and a soil and groundwater closure investigation be completed by January 2004. However, the Department has not received any USTS permanent tank closure documentation.

Jack Knudson has earned the interest on the cost of compliance due to the delay in completing the Tier 1, or, if necessary, a Tier 2 site assessment. The Tier 1 Report was first due in June 1999. Therefore, the report is approximately 87 months overdue. Applying an average interest rate of 0.8% per month on the cost of compliance over the period of noncompliance ($\$6,000 \times 0.008 \times 87 \text{ months} = \$4,176.00$), the economic benefit is estimated to be \$4,176.00.

The closure report was due January 2004. The cost of completing a soil and groundwater investigation and submitting a report is estimated \$1,000. The estimated benefit over the period of non-compliance is ($\$1,000 \times .008 \times 32 \text{ months} = \256). The total economic benefit is estimated at \$4,432.

GRAVITY: Jack Knudson owned and operated the two 560-gallon USTS and Jack Knudson owned and operated the two 1,000-gallon USTS. Petroleum contamination was observed during the removal of the two 560-gallon USTS in 1989 and a site investigation report was submitted in July 1991, which confirmed the need for further assessment. Legislation in 1995 resulted in the suspension of further site assessment until new rules were adopted in 1997. A tiered site assessment has been required by Jack Knudson since 1999. Additionally, Jack Knudson has never documented a tank removal or completed a soil and groundwater closure investigation for the two 1,000-gallon tanks, which was due in January 1999. A soil and groundwater investigation is necessary to determine if the 1,000 gallon USTS have leaked. For this factor, \$3,000 is assessed.

CULPABILITY: Jack Knudson has been given numerous written notices requiring completion of a tiered site assessment. They have not established a financial inability. The failure to comply is deemed to be knowing and willful. For this factor, a penalty of \$3,000 is assessed for failure to complete a tiered site assessment and \$3,000 is assessed to Jack Knudson for failure to complete a tank closure report for the two 1,000 gallon USTS.

VII. WAIVER OF APPEAL RIGHTS

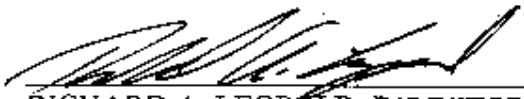
Iowa Code section 455B.476, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission and the right to a contested case evidentiary hearing. Jack Knudson voluntarily enters into this administrative

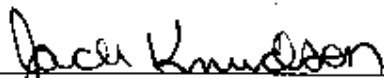
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consent order and with knowledge that he is waiving his rights to a contested case. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this consent order may result in the imposition of further administrative enforcement and assessment of penalties or referral to the Attorney General to obtain appropriate relief in Iowa District Court pursuant to Iowa Code sections 455B.476(3) and 455B.477. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.


Dated this 5 day of Nov, 2007.
RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES


Dated this 23 day of Oct, 2007.
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UST No. 198600632, FO 4, David Wornson, Tammy Vander Bloemen, Tom Collins, V(F)