

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

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**IN THE MATTER OF:**

**HARLAN RUDD AND  
KAREN RUDD, F/D/B/A RUDD  
BROTHERS TIRES**

**ADMINISTRATIVE ORDER  
2009-UT-09**

**UST NO. 199117301  
LUST NO. 8LTZ53**

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**TO: Harland Rudd  
Karen Rudd  
311 E. Main  
Drakesville, IA. 52552**

**I. SUMMARY**

This order requires Karen and Harlan Rudd to submit a revised corrective action design report (CADR) and an interim monitoring report within sixty (60) days of receipt of this order. Any claim of financial inability to comply must be documented within fourteen (14) days. Please refer to Division V below for more details.

You are required to pay an administrative penalty of \$10,000 to the order of the Iowa Department of Natural Resources within sixty (60) days of receipt of this order unless the order is appealed as provided in Division VII 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 appeal rights:**

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

**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 Chapter 455B, Division IV, Part 8 and Environmental Protection Commission (Commission) rules in

Chapter 567 IAC 135. Iowa Code section 455B.109 and Commission rules in Chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

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**III. STATEMENT OF FACTS**

1. In April, 1991, Harlan Rudd registered with the Department of Natural Resources (Department) as the owner of one 1,000 gallon petroleum underground storage tank (UST) located at 101 N. Washington, Drakesville, Iowa. The UST was registered as "permanently out of use" and the registration noted the UST had been removed on October 25, 1990.
2. Harland Rudd and Karen Rudd owned the property at 101 N. Washington, Drakesville, Iowa since at least 1990 until the property was sold to Randy and Cheryl Vanskike in October of 2000. The property is currently owned by Wade and Virginia Marshall.
3. Upon information and belief, Harlan Rudd, Karen Rudd and Mike Rudd owned or operated the UST under a business entity with the trade name "Rudd Brothers Tires" at all times relevant to this order.
4. On March 4, 1992, Harlan Rudd registered a second 1,000 gallon petroleum UST with the Department. The registration stated the UST had been installed on October 1, 1990. This UST was reported to the Department to have been taken out of operation and temporarily closed on or about March 1, 1998. The UST was permanently closed by removal on June 6, 2000.
5. On September 17, 1992, the Department issued Administrative Order No. 92-UT-58 to Harlan Rudd, d/b/a Rudd Brothers Tires. The Order directed Mr. Rudd to complete the UST closure process associated with the removal of the 1,000 gallon UST in October 1990 by conducting a soil and groundwater closure investigation. On June 15, 1994, the Department received groundwater samples conducted as part of the UST closure investigation indicating the present of petroleum contamination above then existing corrective action standards.
6. On August 29, 1994, the Department issued a compliance notice to Harlan Rudd requiring him to retain a certified groundwater professional and complete a soil and groundwater assessment and submit a "site cleanup report" (SCR) within 180 days in accordance with then existing Commission rules. The Department did not receive the required SCR.
7. As a result of changes in legislation and Commission rules between 1995 and 1998 and the fact that an SCR had not been submitted as previously required, the Department issued a compliance notice to Harlan Rudd dated June 30, 1999 requiring him to again retain a certified groundwater professional and submit a soil and groundwater evaluation and risk assessment, referred to as a Tier 1 or Tier 2 assessment, within 90 days. Mr. Rudd was also referred to the Iowa UST Fund to inquire about financial assistance to complete this work. The Department did not receive a report or any further communication from Mr. Rudd.
8. On October 13, 1999, a Department staffperson confirmed that Solstice Company and its certified groundwater professional, Peter Muckenhaupt, had been retained by Mr. Rudd to complete the tiered site assessment. The groundwater professional later reported that he would submit a Tier 1 report by December 15, 1999. The report was not submitted.

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9. The Department sent an overdue notice dated June 1, 2000. By letter dated June 16, 2000, Karen Rudd notified the Department that Mr. Muckenhaupt had been hired and would begin drilling the site on June 20, 2000. On January 20, 2001, Mr. Muckenhaupt called the Department and reported that he had given Karen Rudd a Tier 1 report on December 1, 2000 and asked if the Department had received it. The Department reported it had not received the report. The Tier 1 report recommended a Tier 2 assessment be conducted.

10. The Department issued a compliance notice dated February 21, 2001 requiring Karen and Harlan Rudd to complete the Tier 2 site assessment and submit a report by May 21, 2001. On May 21, 2001, Mr. Muckenhaupt reported to the Department that he did not have a contract with Harlan or Karen Rudd to complete the Tier 2 report. Karen Rudd then reported that she had been out of state due to health problems of Harlan Rudd. On June 13, 2001, Mr. Muckenhaupt notified the Department that he had been retained and would submit the report by July 13, 2001. He later reported the report had been submitted to Karen Rudd during the summer. The Department did not receive a Tier 2 report. After the Department contacted Karen Rudd on February 18, 2002, she submitted the Tier 2 report on February 22, 2002.

11. By letter dated April 4, 2002, the Department project manager notified Karen Rudd that the site had been classified as "high risk" and as a result the next phase of the project required submittal of a "corrective action design report" (CADR) by August 9, 2002 in accordance with Commission rules. The Department did not receive a CADR or any further communication from Harlan or Karen Rudd.

12. On April 25, 2003, Karen Rudd reported by fax to the Department that she had been out of state due to Harlan Rudd's health but would be returning April 28, 2003 and would retain a consultant for the CADR. The Department did not receive a CADR.

13. On September 21, 2004, the Department project manager sent a notice to Karen Rudd offering the opportunity to participate in a meeting to assist them in resolving issues of regulatory compliance, funding issues with the Iowa UST Fund and other barriers to completion and implementation of the CADR. The Department received no response. The Department issued a second letter dated March 30, 2005, scheduling a conference for June 20, 2005.

14. The Department received a CADR on June 10, 2005. The CADR proposed re-sampling to determine if the plastic water line receptor remained high risk or a "bioslurping" remediation system. Due to financial concerns and ability to pay for these actions, the Department scheduled a conference for August 19, 2005 at which Karen Rudd, her consultant, Department staff and a representative of the Iowa UST Fund participated. It was agreed Karen Rudd would submit an application to the Iowa UST Fund to determine eligibility for assistance. She agreed to submit the paperwork within two weeks and report the results by September 15, 2005. If the Iowa UST Fund denied eligibility, Karen Rudd agreed to submit financial documentation to the Department to support her claim of inability to pay.

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15. On September 16, 2005, the Department project manager contacted the Iowa UST Fund and confirmed that the Rudd's had not submitted any claim forms.

16. Between January and March 2006, the Department consulted with representatives of the Iowa UST Fund to attempt to resolve potential issues as to Fund eligibility. Although there appeared to be potential problems with qualifying the site and Rudd's for remedial benefits through the Iowa UST Fund, the Department issued an overdue notice to Karen Rudd dated March 30, 2006 and required her to submit a claim to pursue Iowa UST Fund remedial benefits. Karen Rudd contacted the Department and eventually the Iowa UST Fund sent Karen Rudd the application forms on April 25, 2006. The Department contacted the Iowa UST Fund on May 12 and again May 22, 2006 and confirmed they had not received any claim forms.

17. To date, Karen and Harlan Rudd have not submitted claim forms to the Iowa UST Fund or submitted inability to pay forms to the Department. Interim site monitoring reports have not been submitted. The CADR has not been approved or disapproved due to Karen Rudd's failure to follow through on the agreement to submit claim forms and determine ability to pay.

**IV. 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 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 at Chapters 567 IAC 135 and 136.

2. Iowa Code section 455B.471(6) defines "owner" of USTs. These USTs were in service after July 1, 1985. Karen Rudd and Harlan Rudd are owners as defined and responsible for taking the corrective action as required by this order.

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." Karen Rudd and Harlan Rudd are operators as defined and responsible for taking the actions as required by this order.

4. 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 at Iowa Code section 455B.471(9).

5. Department rule 567 IAC 135.14 defines levels of contamination, which constitute Department action levels. Petroleum contamination on site exceeds action levels requiring further corrective action. Owners and operators of USTs are required to conduct a Tier 1 assessment under Department rules 135.8 et seq. when petroleum contamination above a Department action level is documented. See 135.9(2). Depending on the results of the Tier 1 analysis and certain specified

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conditions in the rules, parties may be required to conduct a Tier 2 site assessment. See 135.9(2) and 135.10.

6. Based on the Tier 2 risk assessment, the Department classifies the site as high risk, low risk or no action required. Sites that are classified as high risk are required to submit a corrective action design report (CADR) within sixty (60) days of notice of the classification notice. As an alternative to submittal and review and approval of a CADR, owners and operators may agree to participate in a corrective action meeting process and a corrective action plan is incorporated into a memorandum of agreement. See 135.12(3)(d) and 135.12(9). Interim monitoring reports are required to be submitted to the Department at least annually for all sites classified as high risk. See 135.12(3)(e). A site may be re-classified from high risk to low risk classification if during the course of taking corrective action conditions justify it. A site monitoring report may be submitted requesting reclassification.

7. Upon approval of a CADR or a corrective action plan incorporated into a memorandum of agreement, the owner and operator are required to implement the corrective action. See 135.12(3)(d) and 135.12(9)(a). Owners and operators are also required to conduct at least annual "interim" site monitoring until corrective action is approved and implemented. See 135.12(3)(e).

8. All corrective action must be conducted by a certified groundwater professional in accordance with 567 IAC 135.8(2).

9. The Department has not approved the CADR submitted by Karen and Harlan Rudd's groundwater professional in June of 2005. Karen and Harlan Rudd have failed to implement the approved corrective action in violation of Commission subrule 567 IAC 135.12(9) and to submit annual interim monitoring in violation of subrule 567 IAC 135.12(3)(e).

**V. ORDER**

THEREFORE, you are ordered to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Within thirty (30) days of receipt of this order, provide written notification to the Department's UST section of the certified groundwater professional retained for the purpose of submitting a revised CADR and completing interim monitoring in accordance with 567 IAC 135.12(3)(e). An interim monitoring report and a CADR must be submitted within 60 days of receipt of this order. Notification must include a copy of a written contract the terms of which reasonably obligate the consultant to complete a CADR and interim monitoring report in accordance with this order.

2. If you claim financial inability to comply with this order, you must (1) immediately upon receipt of this order submit a remedial benefits claim with the Iowa UST Fund through their administrating agent, GAB-Robins, Inc. and provide all supporting documentation available to establish facts necessary and relevant in order to qualify for remedial benefits as provided by law; (2) exhaust appeal rights if there is a reasonable basis to contest a claim denial and (3) submit to the Department

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the "inability to pay" financial documentation (forms attached) in accordance with Commission rule 135.17 within fourteen (14) days of receipt of this order. A claim of financial inability is not a defense to this order but the Department in its sole discretion may consider this claim and suspend or defer compliance with paragraph one (1) above.

3. Pay to the order of the Iowa Department of Natural Resources an administrative penalty of \$10,000 within sixty (60) days of receipt of this order unless the order is appealed as provided in Division VII below.

**VI. PENALTY**

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision

2. Iowa Code section 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 IAC Chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The Department reserves the right to reassess the penalty rationale if on appeal, additional information warrants a modification. Because the penalty assessment could exceed the \$10,000 statutory limit, \$10,000 is assessed.

**ECONOMIC BENEFIT:** The parties have earned the interest on the cost of compliance due to the delay in completing the CADR and implementing its terms and completing annual interim monitoring. The cost of implementing remediation or replacement of plastic water lines to remove the high risk condition could be in the range of \$100,000. Applying the interest rates applied by the Iowa Department of Revenue for unpaid taxes, the interest could easily exceed the \$10,000 administrative penalty limit. Even the cost of re-sampling and potentially remodeling and monitoring to reclassify the high risk plastic water line pathway could be in the range of \$10,000. Therefore, for this factor \$10,000 is assessed.

**GRAVITY:** This site has been classified as high risk. There has been a long history of failure to timely submit the tiered assessment and the CADR. The parties have failed to either establish inability to pay for the required action or implement an approved CADR. There has been no interim monitoring since 2005. Applying an assessment of up to \$3,000, \$3,000 is assessed for this factor.

**CULPABILITY:** The parties have been given every form of compliance assistance and abundant opportunity to either comply or establish they have made a good faith effort to qualify

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for Iowa UST Fund benefits. They have not tried to establish their inability to pay by submittal of financial documentation to the Department. Their action and inaction is considered grossly negligent if not intentional. Applying an assessment of up to \$3,000, \$3,000 is assessed for this factor.

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code sections 455B.476 and 561 IAC 7.5(1), as adopted by reference by chapter 567 IAC 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and Chapter 561-IAC-7.

**VIII. NONCOMPLIANCE**

Failure to comply with this order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.477.

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 22 day of  
Sept., 2009

Tracking information  
Harlan and Karen Rudd, David Wornson, E. Douskey, FO6 V (D).