

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**CENTRAL TRANSPORT
INTERNATIONAL, INC. AND
CROWN ENTERPRISES, INC.**

**ADMINISTRATIVE ORDER
NO. 2009-UT-08**

UST NO. 199617852

**Mail To: Central Transport International, Inc.
Crown Enterprises, Inc.
Reg. Agent, Willard Lindley
12225 Stephens
Warren, MI 480892010**

I. SUMMARY

The Iowa Department of Natural Resources (Department) issues this Administrative Order (Order) to Central Transport International, Inc. and Crown Enterprises, Inc. (jointly Central/Crown) requiring them to produce all monthly underground storage tank (UST) leak detection records from April 2008 to the present within two business days of receipt of this Order. The Order requires Central/Crown to immediately conduct a tank tightness test and submit the results to the Department. The Order assesses an administrative penalty of \$6,500 for repeated failure to produce leak detection records upon request by the Department.

For further detail on the Order requirements, see Division V below.

For questions regarding this Order contact the following:

Relating to technical requirements:

Paul Nelson
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-8779

Relating to Legal Issues:

David L. Wornson, Attorney
Iowa Department of Natural Resources
502 E 9th Street
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 contained in 567 Iowa Administrative Code (IAC) chapter 135. Iowa Code section 455B.109

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and Commission rules at 567 IAC chapter 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. Central/Crown is the registered owner and/or operator of a 10,000 gallon petroleum UST located at 2915 Industrial Park Dr., Iowa City, Iowa. The UST facility is un-staffed self-service facility that provides fuel to Central Transport International, Inc. trucks.

2. By letter dated January 28, 2009, the Department issued a proposed Consent Order to Central/Crown which assessed a \$1,500 penalty for their failure to timely complete a third party compliance inspection prior to the regulatory deadline of December 31, 2007. The compliance inspection was completed on December 4, 2008. In the course of conducting negotiations, Central/Crown agreed to sign the Consent Order and pay the \$1,500 penalty. The Department received a check for \$1,500 drawn on the account of Crown Enterprises, Inc. on July 1, 2009. After numerous contacts and numerous promises to sign the Consent Order, Central/Crown has failed to sign the Consent Order and return it to the Department as promised.

3. As early as April 22, 2009, a designated employee of Central/Crown, Rachel Lang, informed the Department attorney that leak detection of the UST at this facility was performed by an electronic remote connection to an "automatic tank gauging" (ATG) system on the UST. The Department attorney requested and on April 23, 2009, Ms. Lang promised to send the last 12 months of passing leak detection records as required by Department rules.

4. The Department attorney made follow-up contacts by telephone to Ms. Lang on May 20, 2009 and June 4, 2009 and each time was promised the records would be promptly sent. Records were not provided.

5. The Department attorney then sent Central/Crown a "final notice" dated June 12, 2009 requesting the last 12 months of leak detection records and an updated tank registration form 148 within two business days as required by Commission rule.

6. Ms. Lang sent an email dated June 15, 2009 to the Department attorney stating Central/Crown was currently using "statistical inventory reconciliation" (SIR) as its leak detection method. The Department attorney replied to Ms. Lang by email dated June 15, 2009 once again requesting leak detection records. The email also explained that the third party compliance inspection report submitted as the result of the December 4, 2008 inspection noted that the UST system at this facility was equipped with an ATG leak detection system, but there was no leak detection information stored on the unit. The compliance inspection company, Tanknology, reported it had sent Central/Crown an inspection notice requesting the company provide clarification of the leak detection system used and 12 months of monthly leak detection records as required by Commission rules. When contacted by the Department, Tanknology could not find records of having received the records although it could not definitely say it did not. The Department attorney stated in the email, that the matter was further confused because

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the Department had no record of when Central/Crown had brought the UST system back into operation after having reported it had been temporarily closed in 2003. The Department requested Ms. Lang to report when the system had been brought into service. The email specifically requested the records be produced within two business days as required by rule.

7. The Department attorney then contacted a management level employee of Central/Crown, John Dickerson, and again requested leak detection records on July 15, 2009. Having not received the records or any further response, the Department attorney sent an email dated August 18, 2009 to John Dickerson notifying him the Department intended to proceed with an enforcement action and the assessment of penalties. The email stated that the Department had no choice but to assume the Central/Crown was not conducting leak detection since at least April of 2008 or from the date the UST was brought into service if after April 2008.

8. The Department has received no further response from Central/Crown.

IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the Underground Storage Tank (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, and this regulatory program is necessary to adequately address this concern. 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 in 567 IAC chapters 135 and 136.

2. Iowa Code section 455B.471(6) defines "owner." of USTs. Central/Crown is an owner of an UST at the referenced facility as defined.

3. Iowa Code section 455B.471(5) defines an "operator" as "... a person in control of, or having responsibility for, the daily operation of the underground storage tank." Central/Crown is an operator of an UST at the referenced facility as defined.

4. Commission rule 567 IAC 135.4(5)"c" requires all records be maintained at the UST site and immediately available for inspection or at a readily available alternative site to be provided for inspection upon request. The cited rules are derived from the Environmental Protection Agency (EPA) rules adopted at 40 CFR Part 180. The preamble to the EPA rule (53 Federal Register No. 185, p. 37,140, 9/23/88) indicates that off-site record-keeping may be acceptable if the records can be made available in an expeditious manner as determined by the state agency. If records are maintained at a corporate office, the records must be made available within two business days of the request.

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5. Commission rules 567 IAC 135.4(5)"b" and 567 IAC 136.20 require owners and operators of USTs to fully cooperate with Department requests for documents and to maintain records at the UST site or at a readily available alternative site to be made available upon request by the Department.

6. Commission rule 567 IAC 135.5 establishes the general performance requirements for all UST systems. Rule 567 IAC 135.5(4) specifies alternative methods that may be used to satisfy the monthly UST leak detection requirements. Commission rule 567 IAC 135.5(6) establishes specific leak detection recordkeeping requirements.

7. Central/Crown has failed to maintain and make available to the Department upon request monthly leak detection records showing the UST system meets leak detection performance standards. Furthermore, until qualifying documentation is provided, the repeated failure to provide any records justifies a finding that in fact Central/Crown has not been conducting monthly leak detection for all or a portion of the time period from April of 2008 to the present and from the date this UST was brought into service after having been reported as temporarily closed in 2003.

V. ORDER

THEREFORE, Central/Crown is required to comply with the following terms in order to remedy these violations:

1. Upon receipt of this Order, Central/Crown is required to immediately retain a qualified company and conduct an UST performance tightness test capable of detecting a 0.1 gallon-per-hour leak rate in accordance with 567 IAC 135.5(4)"c". The UST tightness test results must be submitted no later than 10 days from receipt of this Order.

2. Central/Crown is required to produce documentation of what type of leak detection system(s) has been used at this facility since bringing the system back into operation after 2003 and specifically the period from April 2008 to the present. Central/Crown is required to submit to the Department all leak detection records for each month beginning April 2008 to the present which establishes a passing leak test or if a passing test is not available, all tests run for that month. Central/Crown is required to produce these records within two business days of receipt of this Order.

3. Central/Crown shall pay a penalty of \$6,500 to the order of the "Iowa Department of Natural Resources" no later than 60 days after receipt of this Order unless the Order is appealed.

4. If Central/Crown cannot produce records of a passing leak test for each month of operation from April 2008 to the present, or the Department determines it failed to conduct monthly leak detection at any time after bringing this UST into operation, the Department reserves the right to amend this Order or refer this matter to the Commission with a

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recommendation the Iowa Attorney General's office commence an enforcement action in Iowa District Court pursuant to Iowa Code section 455B.477.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for violation of the type cited in this Order.

2. Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000.00 for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to chapter 455B. The Commission has adopted administrative penalty rules in chapter 567 IAC 10. Pursuant to rule 567 IAC 10.2, the Department has determined that a penalty should be assessed. The administrative penalty is determined as follows. The Department reserves the right to expand on and reassess the penalty rationale if on appeal, additional information and further explication and modification is warranted.

ECONOMIC BENEFIT: Central/Crown has not submitted any documentation that leak detection has been performed since the first request in April 2009 for the past 12 months of records. If no leak detection method has been used for all or a portion of these months, Central/Crown has avoided the cost of conducting leak detection. Central/Crown has stated that although they have an ATG unit, it has not functioned as their monthly leak detection system. The Department has no way of knowing if the ATG has been used to maintain the required inventory data for submission to a third party SIR vendor or if it is functional. The minimum costs of obtaining third party SIR reconciliation is \$200-300 per year. The estimated avoided costs of having Central/Crown staff collect accurate inventory data to submit is \$200 per year. For this factor, \$500 is assessed.

GRAVITY: Maintaining and producing records is essential to the release detection and prevention regulatory program. Conducting leak detection at an unstaffed facility is even more critical. Central/Crown has failed to produce any leak detection records for the 12 months prior to April 2009 when first requested to produce records or after April 2009. It remains uncertain if any leak detection has been performed. For this factor \$3,000 is assessed.

CULPABILITY: Management level employees of Central/Crown were given multiple notices to produce records and made multiple promises to do so. Even after been warned of enforcement and penalty assessment, they failed to respond. This inaction constitutes gross negligence if not intentional violation of Commission rules. For this factor, \$3,000 is assessed.

VII. APPEAL RIGHTS

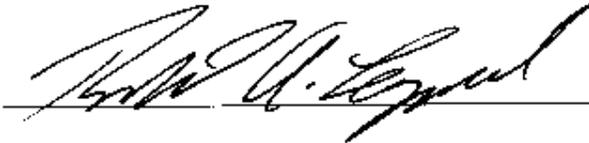
Pursuant to Iowa Code section 455B.476, and 567 IAC 561-7.4(1), as adopted by reference in 567 IAC 7, a party may file a written Notice of Appeal to the Commission within 30 days of receipt of this Order. The Notice of Appeal must be sent to the Director of the Department, and must identify the specific portion or portions of this Order the party wishes to

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appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to the Iowa Code, chapter 17A, and chapter 561 IAC 7.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477. The Department reserves the right to request the Attorney General initiate legal action based on the violation alleged in this Order and as stated in Division V above, if the Department determines Central/Crown has failed to conduct leak detection for all or a portion of the time subsequent to bringing the UST into operation after temporary closure in 2003.



Dated this 18 day of Sept., 2009.

RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Central Transport International, Inc. and Crown Enterprises, Inc., David Wornson, E. Douskey, Paul Nelson, Field Office 6; V.B.