

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Taygold Cooperative & Spurrier Oil Company, Inc. UST NO. 198602097	ADMINISTRATIVE CONSENT ORDER 2010-UT- 01
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TO: Taygold Cooperative Spurrier Oil Company, Inc.
ATTN: Alan Larsen ATTN: Richard C. Spurrier
208 Broadway 404 Broadway
Clearfield, IA 50840 Clearfield, IA 50840

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Taygold Cooperative (Taygold) and Spurrier Oil Company, Inc. (Spurrier) hereby agree to the following Administrative Consent Order (Order). Taygold agrees to pay an administrative penalty of \$6,000, and Spurrier agrees to pay an administrative penalty of \$1,000. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom Collins
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-8879

Relating to legal requirements:

Tamara Mullen, Attorney
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-8934

II. JURISDICTION

The parties hereby agree that 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 (underground storage tanks) and Department rules contained in 567 Iowa Administrative Code (I.A.C.) Chapter 135; and Iowa Code Chapter 455B, Division IV, Part 5 (Hazardous Conditions), and Department rules contained in 567 I.A.C. Chapter 131. Additionally, Iowa Code section 455B.109 and Department rules in 567 I.A.C. Chapter 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. Taygold is an Iowa Corporation with a facility located at Highway 25 South, Clearfield, Iowa. This is the only facility owned and operated by Taygold.
2. This is an active site with three one-compartment 10,000-gallon petroleum underground storage tanks (USTs), each installed in 1985.
3. Taygold carries financial responsibility with Petroleum Marketers Mutual Insurance Company (PMMIC).
4. Spurrier Oil Company, Inc. (Spurrier), an Iowa Corporation, is a fuel transporter located at 404 Broadway, Clearfield, Iowa.
5. On July 7, 2009, around 6:00pm, approximately 200 gallons over-spilled from Taygold's USTs during a fuel transfer by Spurrier.
6. The overspill occurred because Taygold failed to properly measure the tanks' current fuel depth before transfer. Spurrier also failed to measure the tank. This resulted in more product being pumped into the tank than there was room for.
7. Neither Taygold nor Spurrier notified the Department or local law enforcement of the overspill that day.
8. Taygold's manager Mr. Tom Esser finally notified the Department's Emergency Response Section of the release on July 21, 2009, 13 days later.
9. Department Field Office (FO) #4 environmental specialist Ms. Amber Manz conducted an inspection on July 22, 2009. Ms. Manz collected a water sample from the sump discharge located near the tanks; this pumps water from the tank vault to the ground surface.
10. Ms. Manz advised Taygold to excavate contaminated soil to sight and smell.
11. The Department's UST Section mailed a letter on July 22, 2009 to Taygold and Spurrier asking questions about the spill.
12. Spurrier responded to the letter on July 28, 2009 confirming the overfill event of July 7, 2009. Spurrier's President, Mr. Cory Spurrier, stated that the truck driver informed him a "small event" had occurred during delivery, but no further investigation or inquiry was made.
13. Taygold has excavated between one to four feet using the sight and smell test.
14. The Department's UST Section mailed a second later to both Taygold and Spurrier informing them the matter would be referred to the Department's Legal Services Bureau; Taygold's insurer, PMMIC, was copied.

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15. The Department also created a LUST site for this event, 9LT017, and Taygold is required to perform a tiered assessment under Iowa Code Chapter 455B, Division IV, Part 8 (underground storage tanks) and related administrative rules in 567 I.A.C. Chapter 135.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

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, among other things, release detection and prevention applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 I.A.C. Chapter 135.
2. Iowa Code section 455B.471(6) defines "owner" of USTs. These tanks were in service after July 1, 1985, so Taygold is an owner as defined and responsible for taking the actions agreed upon in 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." Taygold is an operator as defined and responsible for taking the actions agreed upon in this Order.
4. "Petroleum" or its constituent parts is a "regulated substance" as defined at Iowa Code sections 455B.471(7) and (8). A "release" of a regulated substance has occurred at the site as defined at Iowa Code section 455B.471(9).
5. Pursuant to 567 I.A.C. 135.6(1), owners and operators are required to report a suspected or confirmed release from an UST to the Department within 24 hours, or within 6 hours if a hazardous condition exists as defined by 567 I.A.C. 131.2.
6. Because petroleum qualifies as a "hazardous substance" under Iowa Code section 455B.381(5), this spill qualifies as a "hazardous condition" reportable release under 567 I.A.C. 135.6(1)"a" and 131.2 and, therefore, should have been reported within 6 hours to both the Department and local law enforcement. Taygold failed to do either on time only notifying the Department 13 days later, and never notified local law enforcement.
7. Additionally, Taygold violated 567 I.A.C. 135.4(1)(a) by not testing the available volume in the tank before delivery to ensure there was sufficient room in the tank to hold all of the fuel.
8. Iowa Code Chapter 455B, Division IV, Part 4 contains the Hazardous Conditions law. Iowa Code section 455B.392 declares that the Department is the state agency tasked with preventing, abating, and controlling the public's exposure to hazardous conditions.

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9. Spurrier is a "person having control over a hazardous substance" as defined by Iowa Code section 455B.381(7) because it "handles, [and] transports" a hazardous substance. Petroleum qualifies a "hazardous substance" under Iowa Code 455B.381(5) due to its toxic, corrosive, flammable, and irritant properties.
10. The release of a petroleum product into the environment presents a "hazardous condition" under Iowa Code section 455B.381(4).
11. Spurrier, as a person handling a hazardous substance, was obligated pursuant to Iowa Code section 455B.386 to report the existence of the hazardous condition caused by this overspill as soon as possible, but no later than six hours after its onset, to the Department and the local police department. Spurrier's failure to do so renders it liable to a statutorily-mandated \$1,000 penalty. *See also 567 I.A.C. 131.2.*

V. ORDER

THEREFORE, the Department hereby orders and Taygold and Spurrier each agree to the following:

1. Taygold shall pay to the order of the "Iowa Department of Natural Resources" an administrative penalty of \$6,000.00 within 30 days of the Director signing this Order.
2. Spurrier shall pay to the order of the "Iowa Department of Natural Resources" an administrative penalty of \$1,000 within 30 days of the Director signing this Order.

VI. PENALTY

Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. *See 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 the issuance of an Order with a penalty.

Spurrier

HAZARDOUS CONDITION REPORTING: Spurrier failed to comply with Iowa Code section 455B.386 which imposes an automatic \$1,000 penalty for failure to report a hazardous condition.

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Taygold:

ECONOMIC BENEFIT: Taygold did not gain any significant economic benefit from the untimely reporting of this release so no penalty is assessed for this factor.

GRAVITY: Timely reporting of an overfill is a major regulatory requirement of the UST program as it enables the Department to quickly respond and prevent the situation from posing further threat to human health and the environment. This overfill should have been reported as a hazardous condition within six hours of its occurrence. Instead, it was reported 13 days later. Significantly, the overspill could have been completely avoided if Taygold had properly measured the tank prior to fuel delivery to assess available volume as required by the UST regulatory program. Therefore, \$3,000 is assessed for this factor.

CULPABILITY: Taygold was completely aware of the spill when it occurred; there was no delay in knowledge to account for the failure to timely report. Thus, \$3,000 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.476 and 561 I.A.C. Chapter 7, as adopted by reference by 567 I.A.C. Chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Taygold and Spurrier. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the failure to report violations described in this Order. This Order does not apply to Taygold's obligations to perform site assessment and remediation work at this site under Iowa Code chapter 455B, Division IV, Part 8 (underground storage tanks) and related Department rules in 567 I.A.C. chapter 135. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.391 and 455B.477.

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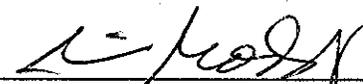
SIGNATURES



TOM ESSER
On behalf of TAYGOLD COOPERATIVE
Dated this 21 day of Dec, 2009



RICHARD C. SPURRIER
On behalf of SPURRIER OIL COMPANY, INC.
Dated this 21 day of Dec, 2009



RICHARD A. LEOPOLD, Director
IOWA DEPARTMENT OF NATURAL RESOURCES
Dated this 9 day of Jan, 2010

Taygold Cooperative & Spurrier Oil Company, Inc.: FO 4; Elaine Douskey; Tom Collins; Tamara Mullen; IV A, V D