

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Bennett Fuel Center, LLC UST NO. 198601441	ADMINISTRATIVE CONSENT ORDER 2010-UT-03
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TO Bennett Fuel Center, LLC
ATTN: Mr. Brett Eggert
140 Main Street
Bennett, IA 52721

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Bennett Fuel Center, LLC (Bennett) hereby agree to the following Administrative Consent Order (Order). Bennett agrees to pay an administrative penalty of \$3,500. 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. 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

Bennett neither admits nor denies the following statement of facts and has entered into this agreement for purposes of settlement:

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1. Bennett Fuel Center, LLC is an active facility with four 4,000-gallon petroleum USTs installed in 1983.
2. The facility has vapor monitoring wells installed for leak detection. The wells are visually observed and tested on a monthly basis by a third party, Jim's Petroleum Maintenance Co.
3. On June 30, 2008 Jim's Petroleum Maintenance Co. discovered twelve inches of free product in all four monitoring wells surrounding the tank vault.
4. Bennett finally reported this release to the Department on July 21, 2008. Bennett stated it had called Tankology to conduct tank and line tightness testing.
5. Mr. Tom Collins of the Department's UST section contacted Tankology to discuss the tank and line tightness tests. Mr. Collins was told that the tank tightness test had not been finalized and that the line tests were inconclusive.
6. Based on this information, Mr. Collins contacted Bennett and directed them to cease operation and to test the lines again.
7. Also on July 21, 2008, Bennett faxed Mr. Collins inventory control sheets and a record of monthly observations of the wells. The results for two wells showed vapor detections in the months of April and May 2008, but all prior months were at zero. No wells detected anything after May 2008 before the free product was discovered.
8. Field Office 6 environmental specialist Terry Jones visited the facility on July 22, 2008 and spoke with Mr. Brett Eggert. Mr. Jones measured 14 inches of free product in one of the four wells, and roughly 3-5 inches in the other three. He identified the product as gas. Mr. Jones suspected the cause of the release was line-related since one of the dispensers appeared to pump air when activated. He allowed Bennett to use the diesel tanks, and required interim free product recovery by hand-bailing. Finally, Mr. Jones advised Mr. Eggert he would need to hire a certified groundwater professional to begin corrective action.
9. On July 24, 2008 the Department issued a notice requiring completion of a tiered site assessment, immediate interim free product recovery, and submission of a free product assessment report.
10. The Department received Tankology's second line tightness testing results on August 4, 2008. The tests were completed on July 25, 2008 and Tankology indicated that the lines met regulatory requirements.
11. The site has historical contamination identified by Leaking Underground Storage Tank (LUST) No. 8LTT42. This historical release was managed through the Department's Risk Based Corrective Action process and was closed out with a "No Action Required" classification in 2001.
12. The site was given a new LUST number of 9LTN61 as the result of this unreported new release set out above.

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13. Tiered site assessment work is on-going.

IV. CONCLUSIONS OF LAW

Bennett neither admits nor denies the following statement of facts and has entered into this agreement for purposes of settlement:

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 Bennett 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." Bennett 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.

V. ORDER

THEREFORE, the Department hereby orders and Bennett agrees to the following:

1. Bennett shall pay to the order of the "Iowa Department of Natural Resources" an administrative penalty of \$3,500.00 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.

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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.

ECONOMIC BENEFIT: Bennett has received an economic benefit from delaying its report to the Department. However, such economic savings is minimal and the Department is not assessing a penalty for this factor at this time.

GRAVITY: The timely reporting of a new release is a major regulatory requirement of the Department's UST program. The failure to report deprives the Department of the opportunity to independently assess the situation, determine and remedy the cause of the release, order the system to be closed to prevent further releases, and implement immediate corrective action. In this case, even though significant product was discovered, it was not reported for 21 days. Thus, \$2,000 is assessed for this factor.

CULPABILITY: The discovery of a foot of free product in a monitoring well clearly indicates a release has occurred. A reasonable person, even without the regulatory experience that Bennett has, would have known this was a reportable incident. Therefore, \$1,500 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 Bennett. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

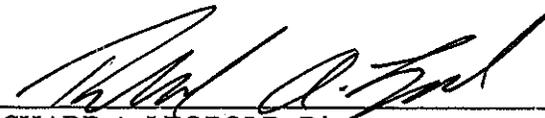
Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the failure to report violation described in this Order. This Order does not apply to Bennett's obligations to perform site assessment and remediation work at this site under Iowa Code Chapter 455B, 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 section 455B.477.

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SIGNATURES



BRETT EGGERT
On behalf of BENNETT FUEL CENTER, LLC
Dated this 26 day of JANUARY, 2010



RICHARD A. LEOPOLD, Director
IOWA DEPARTMENT OF NATURAL RESOURCES
Dated this 3 day of Feb, 2010

Bennett Fuel Center, LLC: FO 6; Elaine Douskey; Tom Collins; Tamara Mullen; V.B.