

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

<b>IN THE MATTER OF:</b>  <b>SHREY PETROLEUM, INC., PALEAN OIL, INC. AND PROFUEL THREE, INC.</b>  <b>LUST No. 9LTO06 UST No. 198602275</b>	<b>ADMINISTRATIVE ORDER NO. 2010-UT- 02</b>
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Shrey Petroleum, Inc.  
Attn. Rajan Thakur  
1003 Summer St.  
Burlington, IA 52601-4020

Profuel Three, Inc.  
Attn. Sean Chinna  
1003 Summer St.  
Burlington, IA 52601-4020

Palean Oil, Inc.  
Attn. Sean Chinna  
1003 Summer St.  
Burlington, IA 52601-4020

**I. SUMMARY**

This Order requires Shrey Petroleum, Inc. (Shrey), Profuel Three, Inc. (Profuel) and Palean Oil, Inc. (Palean) (jointly "named parties") to pay an administrative penalty of \$10,000 as a result of the violation of administrative rules requiring them to timely report and take corrective action in response to a suspected and confirmed release of petroleum from the underground storage (UST) system located at 707 Palean St., Keokuk, Iowa.

Any questions related to this Order should be directed to the following persons:

**Relating to Technical Requirements**  
Tom Collins, Environmental Specialist  
Iowa Department of Natural Resources  
Wallace State Office Building  
Des Moines, IA 50319  
1-515-281-8879

**Relating to legal requirements**  
David Wornson, Attorney  
Iowa Department of Natural Resources  
Wallace State Office Bldg.  
Des Moines, IA 50319  
1-515-242-5817

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.476, which authorizes 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 Chapter 567 IAC 135. Iowa Code section 455B.109 and Commission rules at 567 IAC Chapter 10 authorize the Director to assess administrative penalties up to \$10,000.

Administrative Order  
In Re: Shrey Petroleum, Inc., Profuel Three, Inc., and Palean Oil, Inc.

**III. STATEMENT OF FACTS**

1. Shrey Petroleum, Inc. (Shrey) acquired title to property located at 707 Palean St., Keokuk, Iowa by deed recorded October 27, 2007. Shrey is currently the property owner. Shrey has been registered with the Department as the owner of three underground storage tanks (USTS) at this location at all times relevant to this Order.
2. Profuel Three, Inc. (Profuel) and Palean Oil, Inc. (Palean) are two companies owned and controlled by Sean Chinna. Palean had been identified as an operator in Department records. Profuel was identified as also being an operating entity at this facility. One or both of the companies operated the USTS at 707 Palean, St., Keokuk, Iowa at all times relevant to this Order.
3. On June 20, 2009 at 8:57 AM, the Keokuk Police Dept received a call from a citizen reporting a petroleum leak incident at the UST facility located at 707 Palean St., Keokuk, Iowa. Police called the Keokuk Fire Department who reported a diesel leak running into the storm sewer to the Department's emergency spill line at 10:43 AM. The Fire Department described observing the discharge of diesel fuel from a visible pipe coming from the ground that was about 40 feet down the driveway from the facility's dispenser pump island and at the edge of the driveway. The Fire Department applied absorbent pads and called in for sand to dam the run off. The UST facility did not appear to have any materials to respond to the petroleum release and the store personnel had not taken any action to contain the release or otherwise respond to it.
4. On June 21, 2009, the Department field office 6 inspector, Bert Noll, responded to the incident and observed absorbent pads were still being used to contain the petroleum release.
5. On June 22, 2009, the Department field office inspector, Terry Jones, visited the site and discovered diesel fuel in the submersible turbine pump (STP). Terry Jones reported that the records from the continuous automatic leak detection system for the USIS appeared normal. However, the electronic pressure line leak detection system (PLLD) for UST #3, which is the diesel tank, showed 7 of the last 10 daily test results failed. The facility was not retaining monthly PLLD results.
6. As part of the visit on June 22, 2009, Mr. Jones reported that he interviewed the onsite manager. The manager stated that she had previously contacted her supervisor, Sean Chinna, about the leak, but Mr. Chinna had not provided the manager any instructions as to how to respond to the leak. Mr. Chinna had not visited the facility as of June 22, 2009 to investigate the leak. Mr. Jones contacted Mr. Chinna by telephone. He identified himself as a "district manager" and referred Mr. Jones to a Paul Dandona who was reported to be the facility owner. Mr. Jones contacted Mr. Dandona and when asked if he was the owner, replied that he was not. Mr. Dandona called back later and reported that he was not the owner but was helping a "friend". Mr. Jones advised Mr. Dandona that he needed to pump out the STP and identify the source of the leak. Mr. Dandona said he would contact an UST installation and repair company known as PIPCO.
7. On June 23, 2009, Mr. Jones contacted PIPCO to determine if it had been retained to inspect the facility. The company representative said no. Mr. Jones called Mr. Dandona who reported that CPEC would do the work.

Administrative Order  
In Re: Shrey Petroleum, Inc , Profuel Three, Inc , and Palean Oil, Inc

8. On June 25, 2009, Shawn Kratchovil from CPEC called Mr. Jones. Mr. Kratchovil reported that CPEC had been called in to do an UST system tightness test at the facility. However, he stated that he had discovered product in the basins and therefore could not perform the test and did not have the equipment to pump out the basins to investigate the cause of the leak. He reported that he had contacted EMS to clean out the basins.
9. On June 26, 2009, the Department sent a notice to Shrey requiring them to initiate a Tier 2 site assessment and submit a Tier 2 report within 180 days and immediately begin free product recovery and assessment and submit a free product assessment report within 45 days.
10. On June 30, 2009, Mr. Jones spoke with Shawn Kratchovil with CPEC. He stated they had repaired a leaking impact valve and "O" ring on the diesel line and STP that were leaking. The UST system was tested and met tightness test standards.
11. On July 6, 2009, Paul Nelson with the Department's central UST section reported that he had reviewed UST system tightness tests and corrosion protection test results and found them acceptable. Mr. Jones contacted Sean Chinna and told him he could re-start the diesel pumps.
12. On August 27, 2009, the Department attorney and Paul Nelson spoke with Sean Chinna who reported that as of some recent but uncertain date his company, Pro-Fuel Three, Inc., had a lease or other type of an agreement with Shrey to operate the UST system. Palean had also previously operated the UST system. Mr. Chinna could not confirm exactly when the two companies operated or exactly what legal relationship they had to the property. He did say his monthly payments were going directly to Shrey's bank and applied to Shrey's mortgage on the property.
13. The Department sent a proposed Consent Order on December 14, 2009 to the named parties offering them the opportunity to enter into a voluntary settlement agreement. No response was received by the Department.

#### 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, 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 at Chapters 567 IAC 135 and 136.
2. Iowa Code section 455B.471(6) defines "owner" of USTs. Shrey has been an owner of USTs as defined at all times relevant to this Order.

Administrative Order

In Re: Shrey Petroleum, Inc., Profuel Three, Inc., and Palean Oil, Inc.

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 [UST]." Profuel and Palean have been operators as defined at all times relevant to this Order.

4. The Commission has adopted rules in 567 IAC 135.6 pertaining to the reporting of suspected releases. Subrule 135.6(1) reads as follows:

*Reporting of suspected releases.* Owners and operators of UST systems must report to the department within 24 hours, or within 6 hours in accordance with 567—Chapter 131 if a hazardous condition exists as defined in 567—131.1(455B), or another reasonable time period specified by the department, and follow the procedures in 135.8(1) for any of the following conditions:

a. The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);

b. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and

c. Monitoring results from a release detection method required under 135.5(2) and 135.5(3) that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) In the case of inventory control, a second month of data does not confirm the initial result.

5. The Commission has also adopted rules specifying certain actions that owners and operators must take to investigate and confirm a suspected release. If a release is confirmed, corrective action must be taken in response. Investigatory and confirmation steps may include conducting UST system tightness tests. A soil and groundwater "site check" may be required if there are environmental indicators that a release has occurred even if system tests do not confirm a release. See 135.6(3).

6. Commission rule 135.7 specifies certain actions owners and operators must take in response to a confirmed release. The actions include submittal of a report to the Department within 20 days of confirmation. Rule 135.7(3)"b" reads as follows:

b. Within 20 days after release confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under paragraph "a" and any resulting information or data.

7. The named parties failed to timely report a suspected release in violation of 567 IAC 135.6 in that they failed to report a suspected release indicated by 7 of the last 10 line leak detection system failures.

## Administrative Order

In Re: Shrey Petroleum, Inc., Profuel Three, Inc., and Palean Oil, Inc.

The named parties failed to report a confirmed release at least as of the initial report to the Keokuk Police Department on June 20, 2009.

8. The named parties failed to take corrective action by investigating the cause of the line leak detection failures and failed to timely respond to the confirmed release by initiating action to abate the release, determine its cause and take corrective action.

### V. ORDER

THEREFORE, the Department orders the named parties to comply with the following terms:

1. The named parties are jointly and severally responsible to pay an administrative penalty of \$10,000 by check made payable to the "Iowa Department of Natural Resources" no later than 60 days from receipt of this Order unless the Order is appealed as provided in Division VII below. The check shall be accompanied by a copy of the first page of this Order or a reference to the caption and Order number.

### VI. PENALTY

1. 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.

2. Iowa Code sections 455B 476 and 455B 109 authorize the Commission to establish by rule a schedule of civil penalties of up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 IAC 10. Pursuant to this rule, the Department has determined that a penalty is warranted in this case.

The failure to report a suspected release for each day the UST leak detection system indicated a failure constitutes a separate violation. The failure to report a confirmed release within 24 hours of discovery which occurred at least as of 8:57 AM on June 20, 2009 is a separate violation. The failure to undertake immediate abatement of the confirmed release and submit a report constitutes a separate violation. These separate and distinct violations could each be subject to the maximum \$10,000 statutory limit.

**Economic Benefit:** The named parties potentially have gained an economic benefit due to the avoided costs of promptly reporting and responding to the suspected and then confirmed release. The Department is deferring any assessment for this factor and if the Order is appealed reserves the right to assess for this factor.

**Gravity:** The Department field office first discovered the line leak detection system failures due to its own inspection of the facility. It did not appear anyone at the facility knew anything about how to monitor and respond to the leak detection system. The leak detection system showed failures

Administrative Order

In Re: Shrey Petroleum, Inc., Profuel Three, Inc., and Palean Oil, Inc.

for 7 of the last 10 readouts. There is no evidence anyone at the facility ever reported either the suspected release or the confirmed release which became obvious to the citizen who reported it to the police on the morning of June 20, 2009. The named parties took no action to abate the release. Department rules authorize up to \$3,000 for this factor for each separate and distinct violation. For this factor, the Department assesses \$5,000.

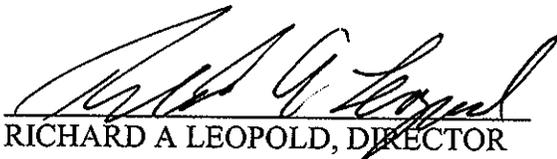
**Culpability:** The named parties appear to have provided no training or education to the facility onsite staff as to how to monitor leak detection equipment or requirements for reporting it. Even the "district manager" when contacted by the store manager took no action to report or investigate the release or instruct the onsite manager as to abatement measures that should be taken. There is no indication any follow up would have occurred but for the Department's inspector's directives. For this factor, \$5,000 is assessed.

**VII. APPEAL RIGHTS**

As provided in Iowa Code section 455B.476, and 561 IAC chapter 7, as adopted by reference by 567 IAC chapter 7, the named parties may appeal this Order by filing a written Notice of Appeal to the Commission and addressed to the Director of the Department within 30 days of receipt of this Order.

**VIII. NONCOMPLIANCE**

Compliance with section V. of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Section IV. of this Order. Failure to comply with this Order may result in the imposition of further administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties in Iowa District Court pursuant to Iowa Code section 455B.477.

  
RICHARD A LEOPOLD, DIRECTOR

Dated this 19 day of Jan., 2010

IOWA DEPARTMENT OF NATURAL RESOURCES

LUST No. 9LTO06, Shrey Petroleum, Inc., Profuel Three, Inc. Palean Oil, Inc., FO 6, V Schrunk, T. Collins, David Wornson, V.D.