

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: ALCHEMIST USA, LLC AND RAVINDER SINGH UST NO. 198601898 LUST #8LTE88	ADMINISTRATIVE ORDER NO. 2010-UT-04
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**To: Alchemist USA, LLC
Reg. Agent Ravinder Singh
1374 North Ave.
Bouton, IA 50039**

**Alchemist USA, LLC and
Ravinder Singh
1680 N. Delaney Road
Gurnee, ILL 60031**

I. SUMMARY

This order requires you to immediately implement interim free product recovery, submit a free product assessment report within 45 days of receipt of this order and implement an approved free product recovery plan. These actions must be completed by an Iowa Department of Natural Resources (Department) certified groundwater professional in accordance with administrative rule in 567 Iowa Administrative Code (IAC) 135.7(5). You are required to pay a penalty of \$8,260 within sixty (60) days of receipt 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 of the Iowa Department of Natural Resources (Department) to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (IAC) _135. Iowa Code

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section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. Ports Petroleum Company (Ports) owned the property located at 4162 Highway 63, Malcom, Iowa from the late 1980s until it was sold by deed to Alchemist USA, LLC (Alchemist) recorded on November 9, 2005. Alchemist sold the property to Paramjit Singh Bedi and Talie Bedi by deed recorded on May 17, 2007.
2. Alchemist is an Illinois registered limited liability company with its principal place of business in Gurnee, Illinois. Alchemist is registered with the Iowa Secretary of State as a foreign company doing business in Iowa. Ravinder Singh is president and a principal member of Alchemist.
3. Alchemist was the owner of the petroleum underground storage tanks (USTS) located at 4162 Highway 63, Malcom, Iowa from November 2005 until the property was sold in May 2007 and has been the UST owner at all times relevant to this order. Ravinder Singh was a person in control of or having responsibility for the daily operations and regulatory compliance of the USTS located at the Malcom UST facility at all time relevant to this order.
4. Petroleum contamination was discovered at this location in the fall of 1990 at levels requiring further soil and groundwater assessment under then existing administrative rules. Ports was the responsible owner and operator of the USTS at that time. Ports conducted the required soil and groundwater investigation and risk assessment and the Department classified the site as "high risk" in April of 1994. Under then existing Department rules, a corrective action design report (CADR) was required to be developed to mitigate high risk conditions and the report was submitted in 1995.
5. Ports notified the Department in June 1995 that a petroleum surface spill had occurred at this location and petroleum product had entered a monitoring well. The Department required Ports to conduct free product assessment and recovery as necessary while at the same time requiring completion of the CADR addressing historical release conditions. The Department authorized Ports to terminate further free product assessment and recovery by letter dated April 18, 1997.
6. As the result of legislative changes and subsequent administrative rule changes in 1995-1997, the Department required Ports to re-assess the historical release conditions under revised risk-based corrective action rules and a tiered risk assessment process.

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7. By letter dated October 3, 2001, the Department approved the Tier 2 site assessment submitted by Ports and classified the site as high risk. From 2001 and into 2006, Ports monitored concentrations and other conditions at the site and submitted a series of site monitoring reports with proposals to remove high risk conditions through implementation of an institutional control in the form of a "restrictive covenant" and later an "environmental covenant" as required by subsequent legislation and rule changes.
8. On September 21, 2006, the groundwater professional working for Ports reported discovering 10 inches of free product in a monitoring well. The Department project manager issued a letter addressed to Ports dated September 22, 2006 requiring Ports to initiate interim free product recovery, complete a free product assessment and submit a report in accordance with Department rules. The Department at this time made no definitive determination as to whether the presence of free product was the result of a new release or associated with prior historical releases. At this time, the project manager was not aware that Ports no longer owned or operated the USTS and that the property had been sold to Alchemist.
9. Alchemist was the owner of the USTS and Alchemist and Ravinder Singh operated the USTS prior to and at the time the free product was discovered and reported in September 2006.
10. Ports continued to conduct site monitoring and initially conducted some degree of site assessment and interim free product recovery between 2006 and 2008. In August of 2008, the Department staff reviewed the site history and site conditions. It was determined that Alchemist had sold the property to Paramjit S. Bedi and Talie M. Bedi on or about May 17, 2007. UST registration and financial responsibility information submitted to the Department identified the UST operator to be a company named "Sonutel, LLC d/b/a Fuel Mart" at least as of November 2007, during the time Alchemist owned the property and after the time Bedi acquired property ownership. Paramjit and Talie Bedi are principals in Sonutel, LLC.
11. After reviewing the historical release conditions, the recent discovery of free product in September of 2006 and the changes in UST ownership and operation, the Department determined that the free product was likely the result of a release during the time Alchemist owned the facility in 2006. The Department sent a free product assessment and recovery compliance notice to Alchemist dated August 27, 2008. The letter required a response and a free product assessment report within forty-five days of receipt. The Department received no response.
12. The Department upon further investigation determined that Paramjit Bedi had apparently abandoned the facility and the USTS had been taken out of service in December of 2007 or January of 2008. Farmers State Bank foreclosed on its mortgage with Paramjit Bedi and Talie Bedi and obtained a Sheriff's deed dated May 5, 2008. Farmer's State Bank voluntarily removed

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the USTS and submitted a tank closure report to the Department. The report documents observations of visible perforations in two of the 8,000 gallon diesel USTS.

13. The Department's attorney then reviewed the site history and issued a letter dated June 6, 2009 addressed to Ports, Alchemist and Paramjit and Talie Bedi. The letter outlined the ownership and regulatory history and the various theories as to during what times petroleum releases evidenced by free product could have reasonably occurred. Since significant levels of product were first discovered in September of 2006 during Alchemists' ownership and operation of the USTS, the letter states that Alchemist is a likely UST owner and operator responsible for undertaking corrective action to address the new release. The letter also states that evidence of holes in the tanks at the time of removal suggests the potential for continued leakage from the UST system during Bedi's ownership and Sonutel's operation. The letter required the parties to contact the Department to participate in settlement negotiations. Ports timely responded and offered to participate. The Department received no response from Alchemist or the Bedis whose place of residence is uncertain.

14. The Department attorney discussed this matter with a representative of Alchemist on August 19, 2009 after contacting the person on another compliance matter. The Department attorney sent an email dated August 19, 2009 to the representative attaching a copy of the June 6, 2009 letter, confirming the conversation and requesting a formal response no later than August 24, 2009. The Department received no response.

15. The Department sent a second compliance notice to Paramjit and Talie Bedi to an alternative address at 34365 Cedar Ave., Yucaipa, California without any response.

16. The Department sent a notice to Alchemist, Ports and Alchemist dated September 21, 2009 stating that if the matter remains unresolved as of October 2, 2009, the Department will initiate an enforcement action. Ports responded in a timely fashion indicating its ongoing willingness to meet and discuss a solution. Alchemist and the Bedis failed to respond.

17. Ports submitted a revised Tier 2 site assessment report in February 2010. The Department approved the current site classification of "low risk" and Ports continues to assume responsibility for addressing the dissolved phase conditions at the site. The free product assessment and recovery is the responsibility of Alchemist.

18. To date, the Department has received no response from Alchemist or the Bedis.

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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 Environmental Protection Commission (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 Chapters 567 IAC 135 and 136. The director of the Department may order any responsible UST owner or operator to take all corrective action consistent with Commission rules. See Iowa Code section 455B.474(1)(f)(11).
2. Iowa Code section 455B.471(6) defines "owner" of USTS. Alchemist was the owner as defined at the time the free product release was discovered and reported in 2006 and responsible for compliance with the terms of 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." Ravinder Singh in his capacity as president and a principal member in Alchemist was an operator as defined at the time free product was discovered and reported in 2006 and responsible for compliance with the terms of this order.
4. A discharge of a pollutant to water of the state without a permit authorized by the director of the Department is a violation of Iowa Code section 455B.186. Petroleum free product is a pollutant as defined in Iowa Code section 455B.171(18). Iowa Code section 455B.175 authorizes the director of the Department to initiate an enforcement action against any "person" found to be in violation of Iowa Code section 455B.186. A "person" is defined in Iowa Code section 455B.171(16) and includes " . . . any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation." Ravinder Singh is an "officer" of a private corporation and responsible for compliance with the terms of this order.
5. 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 in Iowa Code sections 455B.471(8) and (9).
6. All corrective action must be conducted by a certified groundwater professional in accordance with 567 IAC 135.8(2).

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7. When free product is discovered, owners and operators are required to immediately begin interim passive free product recovery, complete a free product assessment and submit a report within forty-five days. The assessment report must evaluate permanent free product recovery technologies designed to recover product to the maximum extent practicable. Upon approval of the free product recovery plan, owners and operators are required to implement the plan until termination of free product recovery is approved by the Department. See 567 IAC 135.7(5).

8. Alchemist in its capacity as an UST owner and Ravinder Singh in his capacity as an UST operator are both a "person" responsible for an unauthorized discharge of pollutants to water of the state and have violated the above referenced provisions by failing to immediately initiate interim free product recovery, submit a free product assessment report, and implement a Department approved free product recovery plan.

V. ORDER

THEREFORE, you are ordered to comply with the following provisions in order to redress violations:

1. Alchemist and Ravinder Singh are required to immediately retain a certified groundwater professional (gwp), notify the Department of the name of the retained gwp and begin interim free product recovery as provided in 567 IAC 135.7(5). Alchemist and Ravinder Singh are required to submit a free product assessment report to the Department no later than 45 days from receipt of this order. Upon Department approval of an acceptable free product recovery plan as provided in 567 IAC 135.7(5), Alchemist and Ravinder Singh shall implement the free product recovery plan. Alchemist and Ravinder Singh shall submit evidence of a written contract with its retained gwp no later than 30 days from receipt of this order.

2. Pay to the order of the Iowa Department of Natural Resources a penalty of \$8,260 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 § 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 § 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. Chapter 567 IAC 10 was adopted by the Commission to implement this provision. Pursuant to rule 567 IAC 10.2, the Department has determined that a

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penalty should be assessed. The administrative penalty is determined as follows. The Department reserves the right to reassess the penalty rationale if on appeal, additional information warrants a modification.

ECONOMIC BENEFIT: The named parties have avoided the cost of recovering free product which may have dissolved or migrated since its discovery in September 2006. It is difficult to estimate the potential avoided costs given the available assessment data.

It is not clear from the evidence if Alchemist was notified of its duty to initiate free product assessment and recovery prior to the Department's compliance notice dated August 27, 2008. It is clear that the named parties have earned the interest on the cost of assessment and recovery of free product due to the delay in initiating free product assessment and recovery since August 2008. A reasonable estimate of the cost of conducting interim recovery, submittal of a free product assessment report and implementing recovery is \$10,000. Applying an interest rate of 0.7% per month (interest rate charged by the Iowa Department of Revenue on unpaid taxes) over a period of 18 months the earned interest is approximately ($\$10,000 \times 0.007 \times 18 = \$1,260$).

GRAVITY: Iowa law requires free product to be recovered to the maximum extent practical. The longer recovery is delayed the more difficult it may be to recover it. The named parties were aware of the presence of the free product in September 2006 through communications with the consultant for Ports but took no action. At least since directed by the Department to initiate assessment and recovery in August 2008, they have failed to respond or initiate any action. For this factor, \$3,000 is assessed.

CULPABILITY: The named parties have been notified formally since August of 2008 and have failed to make any contact with the Department. Their failure to comply is deemed intentional or at the minimum grossly negligent. For this factor, \$3,000 is assessed.

AGGRAVATING FACTORS: Ports has been cooperative and responsive to Department requests to discuss allocation of liability between the duty to recover free product and the duty to complete the risk assessment of the dissolved phase petroleum product onsite. The release of free product in September of 2006, has delayed regulatory closure of this site. It is likely that Farmers State Bank who foreclosed on the property and removed the USTS and excavated contaminated soils from the tank pit, have assisted in removing free product that otherwise was the responsibility of the named parties. Alchemist has failed to respond or make any effort to resolve this matter. For these aggravating factors, \$1,000 is assessed.

Total Assessment = \$8,260

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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476, and chapter 567 IAC 7 which adopts by reference chapter 561 IAC 7, the named partes may file a written Notice of Appeal to the Commission within 30 days of receipt of this order. The party should file this Notice of Appeal with the Director of the Department, and must identify the specific portion or portions of this order he wishes to 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 § 455B.477. Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 25 day of
Feb, 2010

Copy to: D. Wornson, E. Douskey, F.O. 5, DNR, V. D