

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

**IN THE MATTER OF:**

**CASEY'S MARKETING COMPANY**

**LUST No. 9LTM73**

**UST No. 198916372**

**ADMINISTRATIVE  
CONSENT ORDER**

**NO. 2009-UT-05**

**I. SUMMARY**

The Department of Natural Resources (Department) and Casey's Marketing Company (Casey's), enter into this Administrative Consent Order for the purpose of resolving regulatory violations associated with Casey's failure to timely report suspected and confirmed releases of petroleum from its underground storage (UST) system located at 1495 Blairs Ferry Road NE, Cedar Rapids, Iowa. Casey's neither admits nor denies the claimed violations and enters into this order for the purposes of settlement.

Casey's agrees to pay an administrative penalty of \$10,000 as specified in Division V below.

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 the Iowa Code 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.

**III. STATEMENT OF FACTS**

Casey's neither admits nor denies the following statement of facts and has entered into this Consent Order for the purposes of settlement.

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1. Casey's registered with the Department as the owner of the UST system located at 1495 Blairs Ferry Road NE, Cedar Rapids, Iowa on a form dated October 4, 2006. Casey's operates the UST system and associated convenience store. Casey's leases the property from the property owner, which is Sondra L. Boniface.

2. Casey's has been the owner and operator of the UST system at this location at all times relevant to this order.

3. On September 4, 2006, the Department received a pre-purchase environmental audit that included the results of soil and groundwater testing that had been completed at this facility prior to Casey's purchase and operation of the UST system from Nordstrom Oil Company (Nordstrom). The laboratory results showed soil and groundwater concentrations which exceeded the Department's corrective action limits. Pursuant to Department rules, the Department issued a notice to the then current UST owner/operator, Nordstrom requiring completion of a Tier 1 site assessment and submittal of a report within 90 days of receipt. The Department received a copy of a budget approval from Nordstrom's insurer, PMMIC, dated November 13, 2006.

4. The Department received a Tier 2 site assessment report submitted by Casey's on May 22, 2007. Casey's has by contract agreed to assume Nordstrom's regulatory responsibilities. The Department reviewed the report and by letter dated July 13, 2007 required Casey's and its certified groundwater professional (gwp) to conduct further assessment, including source sampling, to correct deficiencies. The maximum reported groundwater sample for benzene in MW1 was 3,980 parts per billion (ppb). A revised Tier 2 report dated November 29, 2008 again showed the maximum benzene concentration in groundwater to be 3,980 in MW1. Revisions to the Tier 2 submitted in February 2009 showed the benzene concentration in MW 1 had increased to 14,600 ppb and the maximum onsite concentration for benzene was in MW2 at 28,000 ppb.

5. On September 22, 2008 at 10:30 AM, Casey's gwp, Lisa Coffelt, emailed the Department project manager and informed her that 8 inches of free product had been discovered on the previous Wednesday, September 17, 2008 in a soil gas monitoring well (SGMW1). Ms. Coffelt reported that no free product had been observed in nearby monitoring well one (MW1) and that after bailing SGMW1 the product appeared to recharge.

6. On November 12, 2008, the Department issued Casey's a compliance notice requiring interim free product recovery and submission of a free product assessment report by January 2, 2009 in accordance with Department rules.

7. On November 20, 2008, the Department field office conducted an inspection at the facility and discovered 5.41 feet of free product in MW2. The inspector interviewed the site manager. The manager informed the inspector that leak detection alarms had been going off several months prior and that an UST system service company, Seneca, had been called to reset

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the leak detection system. The manager reported that Seneca had also found a problem with a product line to the middle dispenser and had completed a line repair.

8. In response to the field office inspection, a Department staff person, Tom Collins, sent a notice dated November 21, 2008 to Casey's requesting all available information on their leak detection monitoring and recent repairs. Casey's environmental manager, Jill Reams-Widder, sent Mr. Collins an email dated December 15, 2008 which summarized Casey's response to problems with its leak detection system going back to September 10, 2008 and the discovery of a line leak. The email summarized the events as follows:

a. September 10, 2008. Seneca was called because the electronic line leak detector had not been performing the 0.1 and 0.2 gallon per hour (gph) leak tests as it should. Seneca reprogrammed the unit. Seneca reported observing a "small amount" of product beneath dispensers 3/4. Seneca performed a pressure test on the product line and could not get it to hold pressure. Seneca recommended a third party conduct a pressure test on the lines.

b. September 11, 2008. A service company, Tanknology, performed a piping tightness test on all lines and leak detectors. Product line #2 failed this test. Tanknology reported finding "approximately 20-30 gallons of fuel in the containment under dispenser 3/4". The line was taken out of service. (The Tanknology report dated September 11, 2008 actually states that "...approx 15-20 gallons of fuel in the containment at dispenser 3/4 and approx 1-2" in the premium STP sump".)

c. September 15, 2008. A service company, Midwest Liquids, repaired what was reported as a rusted threading prior to a flex connector on the piping. On September 16, 2008, a 0.1 gph tightness test was run on the line and it passed.

9. In the December 15, 2008 email, Casey's also reported that its service supervisor had not noticed any observable leak to the environment when the piping was excavated presumably on September 11, 2008 to make the repair. Existing monitoring wells were also checked and there was no observable free product. The email report also acknowledged that on September 17, 2008, Casey's gwp, Lisa Coffelt with Seneca, had reported free product in a soil gas well. Casey's reported filing an insurance claim with its insurer, PMMIC, on September 24, 2008.

10. In response to the December 15, 2008 Casey's email, Department staff person, Tom Collins, requested further information by email dated December 15, 2008. Mr. Collins stated that this event should have been reported at least as a suspected release within 24 hours of the line failure on September 10, 2008, the line pressure test failure on September 11, 2008, and the discovery of free product on September 17, 2008. Mr. Collins pointed out that his information indicated there was no under dispenser containment (UDC) as reported by Ms. Reams-Widder. He also pointed out that the double-walled piping was contained within a non-liquid tight "chase". Mr. Collins stated that because there was no UDC the 20-30 gallons (the written report actually says 15-20 gallons) of product reportedly observed by Tanknology on September 11, 2008 must have come from within the chase which explained the rusting in the flex connector and could have likely emptied to the environment. Mr. Collins also asked for information as to

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when the line leak detector alarms went off, whether product was found in the STP sumps and whether any backfill samples were taken when the piping was excavated to make the repair. By email dated December 19, 2008, Ms. Reams-Widder replied by acknowledging that the system did not have UDC (contrary to Tanknology's report to her), that she relied on Tanknology's statement, and had she known the system had no UDC, she would have reported the event. No information on when the line leak detector alarms first went off was provided and no back fill sampling was conducted.

11. In the December 15, 2008 email to Jill Reams-Widder, Mr. Collins asked about information he had received that there had been an incident in 2006 which may have resulted in hitting a product line while drilling a monitoring well. Ms Reams-Widder replied by email dated December 19, 2008 that the following had occurred in 2006:

a. On December 28, 2006, Rewerts Well Company, while probing with a steel rod to determine a safe place to drill and install a monitoring well, had pierced a product line outer casing sufficient to also pierce the fiberglass product line causing a "minor leak". Seneca reportedly repaired the line the same day and the monitoring well was installed (as BH4/MW3) about 5 feet from the product line. Soil and groundwater samples were taken from the borehole and monitoring wells as part of the tiered assessment conducted by Seneca. Neither Seneca nor Casey's reported this event to the Department.

12. The Department approved a passive free product recovery method with monthly monitoring and reporting. In free product recovery monitoring reports submitted in 2009 and up to December 14, 2009, Casey's consultant, Seneca, reported finding 3.64 feet of free product in MW2 on December 14, 2008, 1.52 feet of free product in MW2 on December 18, 2008 and 0.34 feet of free product on January 15, 2009. Subsequent samplings of MW2 by Seneca continued to show a downward trend in the amount of free product present. From August 2009 through November 13, 2009, no free product has been observed in MW2. Continued recovery and monthly monitoring is required until conditions meet standards for termination of free product. Casey's has submitted a revised Tier 2 report recommending the site be classified as "low risk". The Department has not yet approved the report or the recommended risk classification.

#### 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.

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2. Iowa Code section 455B.471(6) defines "owner" of USTs. Casey's has been an owner of USTs as defined at all times relevant to this order.

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]." Casey's has been an operator 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 releases. 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 may 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

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resulting information or data.

7. Casey's failed to timely report a suspected release in violation of 135.6 in that it:

a. Failed to report within 24 hours the piercing of a product line by Rewerts Well Company on December 28, 2006. Casey's and the Department disagree on whether a 2 year statute of limitations would preclude enforcement and assessment of penalties on any claimed failure to report in December 2006.

b. Failed to report within 24 hours the line tightness test failure conducted by Seneca on September 10, 2008, the failed line pressure test conducted by Tanknology on September 11, 2008 and the evidence of 15-20 gallons of product from the product line chase and 1-2" of product in the STP sump, the piping repair and excavation conducted by Midwest Liquids on September 15, 2008 and the discovery of free product by Seneca on September 17, 2009. The Department acknowledges that Seneca, the consultant working for Casey's reported the presence of free product in a monitoring well on September 22, 2008.

8. Casey's violated rule 135.7(3)"b" by failure to submit a report of its initial abate actions within 20 days of the release confirmation observed by Tanknology on September 11, 2008 and the piping repair conducted by Midwest Liquids on September 15, 2008.

### V. ORDER

THEREFORE, the Department and Casey's have agreed to the following terms for the purpose of settlement:

1. Casey's shall pay an administrative penalty of \$10,000 by check made payable to the "Iowa Department of Natural Resources" no later than March 19, 2010. 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 Department assessment indicates that the failure to report events in 2006 and 2008 constitute separate and distinct reporting violations and that each could be subject

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to the maximum \$10,000 statutory limit. The Department and Casey's have agreed to the assessment of a \$10,000 penalty for the purposes of settlement.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.476, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of Casey's. By signing this Order, Casey's waives all rights to appeal the terms and conditions of this Order.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the alleged violations described in this Order. 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.



CASEY'S MARKETING COMPANY  
By: Michael R. Richardson, President

Dated this 4<sup>th</sup> day of March, 2010



RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10 day of March, 2010

LUSI No. 9LIM43, Casey's Marketing Company, FO 1, R. Hummel, I. Collins, David Wornson, V.D.