

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE ORDER**

<b>IN THE MATTER OF:</b>  <b>ALCHEMIST USA, LLC</b>  <b>UST NO. 198601149</b> <b>13780 North Ave., Bouton, Iowa</b>	<b>ADMINISTRATIVE ORDER</b> <b>NO. 2010-UT-07</b>
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**TO: Alchemist USA, LLC**  
**Reg. Agent, Ravinder Singh**  
**1374 North Ave.**  
**Bouton, IA 50039**

**I. SUMMARY**

This order requires you to do the following at the underground storage tank (UST) location at 13780 North Ave., Bouton, Iowa:

- Conduct an internal inspection of the USTS and submit a report no later than May 28, 2010 or temporarily close and then permanently close the UST system.
- Complete repairs and if necessary replacement of all under dispenser containment sumps no later than May 7, 2010.
- Complete repair of line leaks or in the alternative remove all product from the leaking lines and submit a certification of temporary closure for the lines and USTS.
- Retain a Department certified installer/tester to inspect and complete necessary repairs and maintenance tasks as specified below.
- Pay an administrative penalty of \$10,000 to the order of the Iowa Department of Natural Resources within sixty (60) days unless the order is appealed as provided in Division VII below.

Any questions regarding this order should be directed to:

**Technical requirements:**

Bill Gibbons, Field Office 5  
Iowa Department of Natural Resources  
401 SW 7<sup>th</sup>, Suite I  
Des Moines, Iowa 50309  
Ph: 515/725-0268

**Legal issues and appeal rights:**

David Wornson, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/242-5817

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**II. JURISDICTION**

This order is issued pursuant to Iowa Code section 455B.474(1)(f)(11) and section 455B.476, which authorize the Director to issue any order necessary to secure compliance with Iowa Code Chapter 455B, Division IV, Part 8 and Department rules contained in Chapter 567 IAC 135. Iowa Code section 455B.109, section 455B.476 and agency rules in Chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000

**III. STATEMENT OF FACTS**

1. Alchemist USA, LLC (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.
2. Alchemist is registered with the Department as the owner and operator of petroleum underground storage tanks (USTS) consisting of a 12,000 gallon, 8,000 gallon and 6,000 gallon capacity. The USTS were installed in 1972. Alchemist is also the owner of a 15,000 gallon double-walled UST installed in 1990. The USTS are located at 13780 North Ave., Bouton, Iowa. Alchemist acquired ownership of the USTS and the property by deed recorded November 29, 2005.
3. Alchemist failed to conduct a third party compliance inspection as required by Department rules by December 31, 2007. The Department entered into Consent Order No. 2009-UT-02 which required Alchemist to complete the delinquent 2007 compliance inspection no later than February 29, 2008 and to pay a \$1,500 administrative penalty. Alchemist retained a certified inspector and a company named Tanknology conducted an initial compliance inspection on February 17, 2009. The inspection noted violations for (1) failure to conduct annual line tightness tests since the last test was conducted January 9, 2008; (2) failure to conduct annual line leak detector tests since the last test was conducted January 9, 2008; (3) failure to conduct a five-year internal inspection of the lined USTS; and (4) failure to maintain records. The Tanknology inspector also noted that the dispenser containment sumps had collapsed. Tanknology reported that Alchemist failed to provide documentation to the inspector that these violations had been corrected within the required 60 day due date.
4. The Department sent a notice to Alchemist reminding it that the February 2009 compliance inspection applied to the inspection required to be completed prior to December 31, 2007 and that the Department rules required a second inspection that would cover the period of January 1, 2008 through December 31, 2010. To date, Alchemist has not completed a third party compliance inspection for this period of time.
5. The Department conducted a follow-up inspection of the facility on March 5, 2009. The inspector noted that the facility still had not produced line tightness test and line leak detector test records and the 5-year internal inspection of the lined USTS had not been completed. The

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inspector also found that the below dispenser containment sumps had collapsed and needed replacement and noted some less important equipment deficiencies. The Department issued an inspection report and notice of violation (NOV) dated March 16, 2009 requiring Alchemist to complete the line and leak detector tests, submit documentation by March 31, 2009 and complete an internal inspection and other equipment repairs and upgrades by April 30, 2009.

6. A representative of Alchemist contacted the Department inspector on March 27, 2009. The inspector confirmed receipt of a certificate of insurance. The inspector stated that line and leak detector tests must be completed by March 31, 2009 and the Alchemist representative stated she would contact Tanknology and get back with dates for the tests to be conducted. The Alchemist representative called the Department inspector on April 16, 2010. It was determined the line and leak detector tests had not been scheduled or completed. The representative requested more time and the inspector said he could work with Alchemist to establish a reasonable schedule if all tasks were completed within 90 days.

7. On April 24, 2009, a representative of Acterra Group contacted the Department inspector to inquire as to what needed to be done at the facility. The contractor stated that they were working on doing a number of repairs and upgrades but the inspector directed that the line and leak detector tests had to be completed first. Acterra Group stated they would schedule those tests within 2 weeks. The Department received no further updates on progress reports from Alchemist.

8. On December 1, 2009, the Department field office did a follow-up site visit. The conditions at the site were the same and there were no records of leak detection or documentation of line tests. The inspector instructed the store manager to contact the owner to obtain records and she responded that she did not have contact information for the owner.

9. On December 3, 2009, the Department inspector contacted Acterra Group. The representative confirmed that they had conducted line tests and all 4 lines and line leak detectors had passed. He agreed to scan and send the documentation to the Department. The Acterra Group line tests were conducted on June 7, 2009. The Department received a call back from an Alchemist representative who stated that they knew line tests had been done but did not have any records. The inspector asked the representative to report on the status of repairs and upgrades.

10. The Department issued an NOV to Alchemist dated December 15, 2009 for failure to submit records and failure to complete the tasks as directed in the prior NOV dated March 16, 2009. The NOV required Alchemist to submit a written response with a plan for bringing the site into compliance by December 30, 2009. Alchemist failed to respond.

11. On February 10, 2010, the Department field office received a call from the manager of the facility. The manager reported that Tanknology had done a line tightness test and found a leak beneath dispensers No. 1 & 2. They had shut down the dispenser and called in someone to repair the line leak. The same day Tanknology contacted the Department and reported the line tightness test failure and stated that "...the line was blown out under dispenser 1-2".

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12. On February 11, 2010, the Department field inspector visited the facility to investigate the line leak. A field technician with Acterra Group was on-site. The inspector reported observing sludge under dispensers 1 & 2 and a strong gasoline odor under dispensers 3 & 4 with an accumulation of ice and gasoline in the containment sump. There was an accumulation of ice but no gasoline odor under dispensers 5 & 6. The Acterra Group technician stated he would have to remove dispensers from the islands and push out the sides of the containment sumps to make repairs and replace the sumps.

13. On February 12, 2010, the Department field inspector reported his observations to a representative of Alchemist and pointed out the fact that Alchemist had failed to replace the dispenser sumps. The Department issued a NOV dated February 16, 2010 to Alchemist summarizing the earlier compliance inspections, NOV and Alchemist's failure to timely respond to violations. The NOV stated that matter would be referred to the Department's Legal Services Bureau for enforcement.

14. The Department conducted a site inspection on April 5, 2010. The inspector found that the under dispenser containment sumps had not been replaced and Alchemist had not made repairs to the leaking premium line at dispensers 1 & 2. The submersible turbine pumps for this premium line and the dispensers delivering fuel for the premium grade and premium-E10 blended gasoline were bagged and not operational. They were only pumping the E-10 gasohol tank and lines. The inspector noted the presence of gasoline in the under dispenser containment sump under dispensers 1 & 2 and observed a strong gasoline odor under dispensers 3 & 4 and 5 & 6. The Department has received no internal tank inspection documentation or a schedule for completion.

#### **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 tanks 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 at Chapters 567 IAC 135 and 136.

2. Iowa Code section 455B.471(6) defines "owner" of USTS. These USIS were in service after July 1, 1985. Alchemist is an owner as defined 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." Alchemist is an operator as defined and responsible for compliance with the terms of this order.

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4. Department rule 567 IAC 135.4(5)"c" requires that all records be maintained at the UST site and immediately available for inspection or at a readily available alternative site to be provided for inspection upon request. The cited rules are derived from the Environmental Protection Agency (EPA) rules adopted at 40 CFR Part 180. The preamble to the EPA rule (53 Federal Register No. 185, p. 37,140, 9/23/88) indicates that off-site record-keeping may be acceptable if the records can be made available in an expeditious manner as determined by the state agency. If records are maintained at a corporate office, the records must be made available within two business days of the request.
5. Department rules 567 IAC 135.4(5)"b" and 567 IAC 136.20 require owners and operators of USIS to fully cooperate with Department requests for documents and to maintain records at the UST site or at a readily available alternative site. If maintained at an alternative site, owners and operators must be able to produce records within two business days.
6. Department rules require owners and operators to maintain documentation that all UST systems, including tank and piping leak detection systems, spill and overfill equipment, are installed and maintained in accordance with the manufacturer's standards and agency rules. See 135.5.
7. Automatic line leak detection equipment must be tested annually in accordance with manufacturer's standards and records must be kept and made available. Pressurized piping must be tightness tested in accordance with 135.5(5)"b" annually. See 135.5(5).
8. All UST systems including tanks and piping must have an approved cathodic protection system. The UST systems using cathodic protection must be inspected every three years. Records of the last two inspections must be maintained by the owner and operator. See 135.4(2).
9. USIS that have been upgraded with internal lining must have the lining internally within 10 years of installation and then 5 years thereafter. See 135.3(2)(b).
10. UST owners and operators are required to retain a Department certified compliance inspector and conduct a compliance inspection by December 31, 2007. A compliance inspection must then be completed within the two year period from January 1, 2008 to December 31, 2009 with at least a six month separation between the prior compliance inspection. After the biennial inspection for the period 2008-2009, all subsequent inspection must be completed within 24 months of the prior inspection with a minimum separation of 6 months. See 135.20(1).
11. Whenever a certified compliance inspector finds rule violations, the owner and operator must at a minimum complete all corrective action within 60 days of notification from the inspector. Completion of corrective action within 60 days does not relieve the owner and operator of any regulatory requirements requiring action within a shorter period of time. See 135.20(3).

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12. Alchemist is in violation of the above cited rules for (1) failure to timely submit line tightness tests and line leak detector tests; (2) failure to complete line tightness and line leak detector tests annually; (3) failure to maintain under dispenser containment sumps; (4) failure to conduct an internal tank lining inspection within 5 years; and (5) failure to complete the required compliance inspection between January 1, 2008 and December 31, 2009.

**V. ORDER**

THEREFORE, you are ordered to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Within 14 days of receipt of this order, submit a copy of a contract with an Iowa certified internal tank inspection inspector the terms of which obligate the inspector to complete an internal inspection of the 3 steel USTS at this location no later than May 28, 2010. If the internal inspection results in a finding that repairs must be made and the UST is not leaking, complete all repairs or other corrective measures in accordance with Department rules within 30 days of receipt of the internal inspection results.
2. As an alternative to conducting the internal inspection or necessary repairs or if you fail to complete the internal inspection by May 28, 2010, you are required to temporarily close the UST in accordance with Department rules in 567 IAC 135.15(1) and guidance. After 12 months of temporary closure, you are required to permanently close the UST in accordance with 567 IAC 135.15(2). If you choose to close the USTS rather than conduct an internal inspection, you must empty the USTS and properly temporarily close them no later than May 14, 2010. If after conducting an internal inspection, you decide to close the USTS, you must empty the USTS and properly temporarily close them within 30 days of the inspection report requiring repairs. You are required to maintain an approved form of continuous financial responsibility on the UST system until it is permanently closed.
3. Within 14 days of receipt of this order, submit a copy of contract with a Department certified installer to have all the under dispenser containment sumps either repaired or replaced in accordance with Department rules and referenced industry standards. Submit a report of the upgrade to the Department no later than May 7, 2010. In the alternative, you must remove all product from the pressurized lines and submit a certification of temporary closure form for the piping and out of service USTS.
- ~~4. Retain a Department certified installer/tester to inspect and address all other maintenance issues including removing the water from the submersible turbine pump containment sumps and other containment sumps, replacing the corroded flex connector, piping, and other corroded components in the sump for the 12,000 gallon no lead plus UST and other corroded components in other containment sumps as necessary; replace or repair all leaking dispenser hoses, repair identified piping leaks under the dispensers, anchor all breakaway valves under the dispensers, and make repairs to wiring, wiring conduit, and electrical junction boxes in the dispensers and at connections to the automatic tank gauge probes; loosen the test boot and pull it away from the~~

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opening where the double walled piping enters the submersible turbine pump containment sump for the 8,000 gallon premium unleaded UST. Submit a report documenting these corrective actions no later than May 28, 2010.

5. Pay an administrative penalty of \$10,000 to the order of the Iowa Department of Natural Resources within sixty (60) days unless the order is appealed as provided in Division VII below. Any payment must include a copy of the front page of this order or a reference to the named parties and Administrative Order No. in the caption of the order.

**VI. PENALTY**

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision

2. Iowa Code section 455B.109 and 455B.476 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See chapter 567 IAC 10. Pursuant to this chapter, 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. The assessment rationale is as follows although the Department reserves the right to modify the rationale based on additional evidence and other considerations.

**ECONOMIC BENEFIT:** The Department has conducted inspections in the past several months and therefore is not requiring Alchemist to conduct the delinquent third party compliance inspection required for the period 2008-2009. Alchemist has therefore avoided the costs of completing the third party compliance inspection. The estimated cost of the inspection is \$600.

**Total economic benefit for this factor is \$600.**

Alchemist has gained an economic benefit due to the delay in complying with Department regulations. The benefit can be estimated based on the interest earned on the cost of compliance over the period of non-compliance. Internal inspections are required to be performed every 5 years after an initial 10-year inspection. The last internal inspection was in 2000. Alchemist acquired the facility in November of 2005 and an internal inspection was due at least as of January 2006. Therefore they have earned the interest on the cost of the internal inspection from January 2006 until at least May of 2010. According to estimates solicited by the Department, the estimated cost of internal inspections on 3 USTS is \$8,400 (\$2,800 per tank). Assuming an average interest rate 8% per year for the period 2006-2010 (based on the interest rate charged by the Iowa Department of Revenue, 701 IAC 10.2) over the period of January 1, 2006 to January 1, 2010, the interest earned would be \$3,360 ( $\$8,400 \times .08 \times 5 = \$3,360$ ). This order requires completion of the internal inspection by May 28, 2010 which is another 4 months of delayed compliance. The interest earned over this period is estimated as ( $\$8,400 \times 0.006 \times 4 = \$202$ ). By

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conducting the 2005 inspection in 2010, Alchemist will have avoided the cost of completing two inspections, one in 2005 and one in 2010. The avoided cost is \$8,400.

**Total Economic Benefit = interest earned over the period of non-compliance = \$3,360 + \$200 = \$3,562. Total avoided costs = \$8,400. Total assessment for this factor is \$11,962.**

The Department is reserving the discretion to assess economic benefit for the other violations.

**Total Assessment: \$12,562**

**GRAVITY:** The duty to conduct internal inspections is a major regulatory measure intended to prevent UST releases. These steel USTs were installed in 1972 and upgraded with internal lining in 1990. The tanks are 38 years old and may be reaching their limits for structural integrity. Annual line tightness tests and leak detector tests are a major leak prevention and detection requirement. Alchemist was over 6 months delinquent in conducting the June 2009 tests and over 2 months delinquent in meeting both the third party compliance inspectors 60 day corrective action due date and the Department inspectors March 31, 2009 due date. Record-keeping is essential to assuring the owner and operator is maintaining a self-directed UST leak prevention and operation and maintenance program. Alchemist failed to respond to records requests for line testing even after completing the tests in June. Maintaining under dispenser containment is essential to preventing line leads from entering the environment. The combination of these violations justifies an assessment of \$3,000 for this factor.

**CULPABILITY:** Alchemist was issued two prior consent orders for failure to complete the required third party compliance inspections. Alchemist also owns and operates other UST facilities in and out of Iowa. The knew or should have know of these most basic regulatory requirements but have demonstrated a repeating pattern of negligence and inadvertence equivalent to gross negligent and reckless disregard for regulatory authority and standards. For this factor \$3,000 is assessed.

**Since the assessment rationale exceeds the statutory \$10,000 limit, the total penalty assessment is \$10,000.**

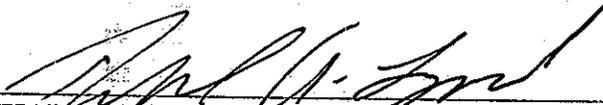
## **VII. APPEAL RIGHTS**

~~Pursuant to Iowa Code section 455B.476 and 561 IAC 7.4(1), as adopted by reference by chapter 567 IAC 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and chapter 561 IAC 7.~~

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VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief, including the assessment of civil penalties of up to \$5,000 per day of violation, pursuant to Iowa Code section 455B.477.

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14 day of  
April, 2010

Copies, David Wornson, Bill Gibbons, E. Douskey, DNR, V. B, C, L

