

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

**IN THE MATTER OF:**

**City of Dubuque**

**UST NO. 198607133**

**ADMINISTRATIVE  
CONSENT ORDER  
NO. 2010-UT-08**

**Mail To: Mr. Mike Denman  
Golf Course Supervisor  
2200 Bunker Hill Road  
Dubuque, IA 52001**

**I. SUMMARY**

The Iowa Department of Natural Resources (Department) and the City of Dubuque (City) have entered into this administrative consent order (Order) for the purpose of resolving alleged violations of the Department's underground storage tank (UST) rules. The City agrees to pay an administrative penalty of \$ 2,600.00. See Section V and VI.

For questions regarding this Order contact the following:

**Relating to technical requirements:      Relating to Legal Issues:**

Brian Jergenson  
IDNR – Field Office 1  
909 West Main, Suite #4  
Manchester, IA 52057  
Ph: (563) 927-2640

Tamara Mullen, Attorney  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8934

**II. JURISDICTION**

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 and Environmental Protection Commission (Commission) rules contained in 567 Iowa Administrative Code (I.A.C.) Chapter 135. Iowa Code section 455B.109 and Commission rules at 567 I.A.C. Chapter 10 authorize the Director to assess administrative penalties up to \$10,000. Iowa Code section 17A.10 authorizes the use of informal settlements.

The City does not admit the statement of facts or conclusions of law herein, but agrees to be bound by the provisions of Section V below.

**III. STATEMENT OF FACTS**

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1. The City is the registered owner of the municipal golf course and its two 560-gallon USTs located at 2200 Bunker Hill Road, Dubuque, Iowa, 52001.
2. During a third-party UST compliance inspection on October 14, 2009, Mr. John Fine of Rounds & Associates noticed a pipe leak in the uncontained diesel dispenser.
3. Mr. Fine's inspection report requested documentation of repair or replacement of the fuel system within 60 days and specified it was the facility owner/operator's responsibility to notify the Department of a suspected release.
4. The City never made any suspected release report to the Department.
5. The third party compliance inspection report set a deadline of December 26, 2009 for the facility to document that appropriate repairs had been made to the fuel system, as well as to provide proof that other deficiencies had been addressed.
6. The Department received an email notification on January 4, 2010 from Rounds & Associates stating responses to the deficiencies had not been received and were overdue.
7. On February 17, 2010, Field Office 1's Brian Jergenson visited the site to conduct an audit inspection and follow-up on deficiencies from the earlier third-party inspection.
8. During the inspection, Mr. Jergenson observed the pipe under the diesel dispenser was wet with diesel. Stained soil was observed below the dispenser.
9. City staff stated Pipe Co, Inc. had been there the day before (February 16, 2010) and had attempted to tighten the pipe fitting.
10. Mr. Jergenson concluded remaining deficiencies from the October 2009 inspection had been addressed, although the City had not submitted proper documentation to Rounds & Associates.
11. Field Office 1 issued a Notice of Violation to the City on February 25, 2010 for failure to report a suspected release and to timely submit repair documentation.
12. The City has made the appropriate repairs.
13. The Department's Legal Services Bureau received an enforcement referral on March 8, 2010.

**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. Iowa Code section 455B.474 authorizes the Commission to adopt rules related to release detection and

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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 I.A.C. 135 and 136.

2. Iowa Code section 455B.471(6) defines "owner" of USTs. These tanks were in service after July 1, 1985. The City 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." The City 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)"a", "Reporting of Suspected Releases," owners and operators of UST systems must report to the Department within 24 hours the "discovery . . . of released regulated substances at the UST site . . . ."
6. The above-stated facts demonstrate that the City failed to report a suspected release to the Department, as evidenced by a leaking pipe and stained soil first witnessed on October 14, 2009 and again on February 17, 2010.
7. Additionally, 567 I.A.C. 135.20(3) states that the "owner and operator shall . . . upon receipt of a compliance inspection report . . . which finds violations of the department's rules . . . take all actions necessary to correct any compliance violations or deficiencies . . . within 60 days of receipt of the inspector's report . . . ."
8. The facts listed above show that the City did not take corrective action within 60 days to correct the leak in the uncontained diesel dispenser, only having Pipe Co., Inc. visit the site and tighten the pipe 125 days later.

**V. ORDER**

1. The City agrees to pay a penalty of \$2,600 to the order of the "Iowa Department of Natural Resources" within 30 days after receipt of a fully executed 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.

Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of

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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.** The City benefitted economically by not having the pipe leak fixed and by not conducting a site check to determine the extent of contamination. Service and parts charge is estimated to be \$100 and the site check is estimated at \$1,500. Therefore, \$1,600 is assessed for this factor.

**GRAVITY.** Petroleum leaks of this nature in fuel systems can cause significant soil and groundwater contamination. The extent of contamination and therefore its impact on human health and the environmental are not presently known. It is the UST program's priority to ensure leaks from UST systems are quickly reported, remedied, and assessed for impact. Thus, \$1,000 is assessed for this factor.

**CULPABILITY.** The City was negligent in not reporting a suspected release to the Department as recommended by its compliance inspector. This negligence was magnified by not having the fuel system serviced in a timely manner. Accordingly, \$1,000 is assessed for this factor.

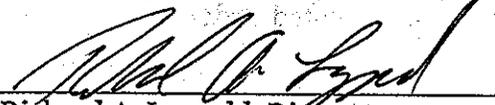
**Mitigation Factors:** The City's financial assurance mechanism for the UST system is self-insurance. Therefore, the financial burden for assessing the extent of contamination through a site check and any future remediation will be paid for by the City. In light of this, \$1,000 is subtracted as a mitigating factor.

**VII. WAIVER OF APPEAL RIGHTS**

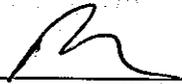
Iowa Code section 455B.476 and Chapter 567 I.A.C. Chapter 7 authorize a written notice of appeal to the Commission. By signing this Order, the City waives all rights to appeal.

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of administrative or civil penalties and referral to the Iowa Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.476 and 455B.477. Compliance with this Order resolves all violations allegedly arising from the third-party compliance inspection referred to herein and the Department inspection and Notice of Violation referred to herein.

  
Richard A. Leopold, Director  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 5 day of May, 2010.

  
Michael Van Milligen  
CITY OF DUBUQUE

Dated this 21 day of April, 2010.

**City of Dubuque:** Joe Sanfilippo, Brian Jergenson, Elaine Douskey; V.B