

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: BRET CASSENS, d/b/a J & J Pit Stop UST NO. 198915521	ADMINISTRATIVE ORDER NO. 2010-UT-09
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TO: Bret Cassens
213 Highview Dr.
Columbus Junction, IA 52738

I. SUMMARY

This order requires you to do the following:

- Permanently close underground storage tanks (USTS) by removal or filling in place, conduct a soil and groundwater closure investigation and submit a closure report within sixty (60) days of receipt of this order. You are required to submit a written contract for the project within fourteen (14) days of receipt and provide written and oral notice to the Department prior to closure activities. *See Division V below.*
- Submit payment to the Department of overdue tank registration fees of \$2,835 within fourteen (14) days of receipt of this order.
- Pay to the order of the Department an administrative penalty of \$8,700 within sixty (60) days of receipt of this order unless the order is appealed within thirty (30) days as provided in Division VII below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Tom Collins
Iowa Department of Natural Resources
401 S.W. 7th, Suite I
Des Moines, Iowa 50309
Ph: 515/281-8879

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)(10) and 455B.476, which authorize the Director to issue any order necessary to secure compliance with

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

Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (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. Bret Cassens is the current owner of property at 213 Highview Dr., Columbus Junction, Iowa and has been the owner of the property at all times relevant to this order.
2. Bret Cassens is registered with the Department as the owner of three 6,000 gallon petroleum USTS located at this property. He has been the person in control of, or having had responsibility for, the daily operation of the USTS at all times relevant to this order.
3. The Department field office conducted a compliance inspection of this UST facility on January 31, 2007. Following the inspection, the Department issued a compliance notice dated February 7, 2007. The notice required Mr. Cassens to provide results of the required annual line tightness test and line leak detector tests which he stated had been completed with passing results shortly after the inspection. These records were required to be submitted no later than February 15, 2007. Mr. Cassens failed to submit these records. The inspector noted that the USTS had factory installed corrosion protection and the piping had impressed current corrosion protection.
4. The inspector noted the last corrosion protection test on the UST system was conducted on May 8, 2005. The next 3-year corrosion protection test would be required to be completed no later than May of 2008.
5. The February 7, 2007 notice advised Mr. Cassens that new regulations required that he retain a Department certified compliance inspector and have the UST system inspected prior to December 31, 2007.
6. The Department issued Mr. Cassens a compliance notice dated November 26, 2007 noting that he had not submitted documentation of a third-party compliance inspection and the regulatory deadline was December 31, 2007. The notice stated that records showed the site was insured by PMMIC which may have conducted a qualifying compliance inspection but Mr. Cassens as the insured must contact PMMIC and grant permission to release the documentation. The Department has not received documentation of a 2007 compliance inspection.
7. The Department field office in response to a citizen complaint contacted the facility manager on June 4, 2008. The manager stated that the UST system had been out of service for about the last nine months. According to the Department database the PMMIC insurance had expired effective December 3, 2007. The Department issued a notice dated June 5, 2008 requiring Mr. Cassens to provide proof that the UST system was covered by an approved method of financial assurance. The notice also advised Mr.

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

Cassens that the 2008-2009 annual tank management fees had not been paid and that in accordance with Iowa statute a \$250 per tank late fee would be assessed. The notice further advised that UST systems must be permanently closed and a certification of temporary closure submitted to the Department. This documentation and payment of fees was required within ten days of receipt. Mr. Cassens has not submitted a certification of temporary closure or paid annual tank management fees for the years 2008-2009, 2009-2010, and 2010 to 2011.

8. A total of \$2,835 in delinquent tank management fees and late fees is unpaid and overdue as specified below.

2008. $3 \times \$65 = \$195 + \$750$ (3 x \$250 late fee = \$750) = \$945

2009. $3 \times \$65 = \$195 + \$750$ (3 x \$250 late fee = \$750) = \$945

2010. $3 \times \$65 = \$195 + \$750$ (3 x \$250 late fee = \$750) = \$945

Total = \$2,835

9. The Department issued a notice of violation dated June 10, 2008 for failure to submit documentation of a compliance inspection by the regulatory deadline of December 31, 2007. The notice required Mr. Cassens to complete and submit documentation of an inspection no later than July 11, 2008. The notice cautioned that administrative enforcement and assessment of penalties could result from failure to comply. The Department has received no documentation of a 2007 compliance inspection. The Department also sent out notices to all UST owners and operators notifying them that regulations required a biennial compliance inspection for the period 2008-2009 no later than December 31, 2009. The Department has not received documentation of a 2008-2009 compliance inspection.

10. The Department made several inquiries in 2009 to determine if the facility and the UST system was in service. The facility appeared to have been abandoned as the result of a site visit on January 14, 2009 and reports by local citizens that the facility was boarded up. There is no evidence the impressed current corrosion protection system has been maintained or that the USTS have been emptied and properly temporarily closed. The UST system is not covered by an approved financial responsibility mechanism.

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 Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site

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

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 USTS were in service after July 1, 1985. Bret Cassens is an owner as defined and responsible for taking the corrective action as required by 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." Brett Cassens is an operator as defined and responsible for taking the actions required by this order.
4. Owners and operators of USTS are required to maintain proof of an approved form of financial responsibility on the USTS until they are permanently closed. See 567 IAC 136.
5. UST systems that have been temporarily out of operation for three months must be temporarily closed according to regulatory standards and owners and operators must submit to the Department a certification of temporary closure and return tank tags. Temporary closure standards require (1) vent lines be left open and functioning; (2) all lines, pumps, accesses, and ancillary equipment be capped and secured; and (3) corrosion protection be maintained. Unless monthly release detection is maintained, USTS must be emptied so that no more than one inch of product remains in the USTS. See 567 IAC 135.15(1)(a-b).
6. USTS that have been temporarily closed for more than 12 months must be permanently closed by removal or filling in place unless the system meets and continues to meet tank performance and upgrade standards. See 567 IAC 135.15(1)"b". The Department may grant an extension of the temporary closure period. The tank closure process requires prior notice and a soil and groundwater closure investigation report. The referenced USTS do not meet tank performance standards.
7. UST systems with impressed current systems must monitor the system and record monitoring results every 60 days and conduct a corrosion protection evaluation every three years. Electricity must be maintained for the impressed current system to operate. See 567 IAC 135.3(1)(a) and (b), 567 IAC 135.4(2).
8. Monthly release detection must be conducted and twelve months of records documenting compliance must be maintained. Annual line tightness tests and line leak detector tests must be conducted and records documenting compliance must be maintained. See 567 IAC 135.5
9. Iowa Code section 455B.473 requires owners and operators to register USTS and pay an initial \$10 registration fee. Iowa Code section 455B.479 requires the payment of an

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

annual tank management fee of \$65 per tank effective April 1 of each year. Owners and operators must register and pay fees for newly installed tanks within 30 days of their existence. See 135.3(3)"e".

10. Iowa Code section 455B.473(8) effective as of July 1, 2002 provides that owners and operators shall pay a \$250 late fee for failure to register or obtain annual tank tags. Imposition of a late fee does not preclude assessment of an administrative penalty under Iowa Code section 455B.476.

11. UST owners and operators must retain a Department certified compliance inspector and conduct a compliance inspection. Department rules require that a compliance inspection be conducted prior to December 31, 2007. A compliance inspection must be completed within the two-year period from January 1, 2008 to December 31, 2009. Mr. Cassens failed to complete a compliance inspection prior to December 31, 2007 and to document completion of an inspection for the period of 2008-2009.

12. Brett Cassens has violated the above regulations with respect to (1) failure to document annual line tightness tests and line leak detector tests as required by the Department inspection on January 31, 2007; (2) failure to maintain an approved form of financial responsibility; (3) failure to properly temporarily close the UST system and submit a certification of temporary closure; (4) failure to maintain corrosion protection; (4) failure to pay annual tank management fees; (5) failure to conduct third party compliance inspections for the period ending December 31, 2007 and the period of 2008 through December 31, 2009; and (6) failure to permanently close the UST system.

V. ORDER

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

1. Permanently close underground storage tanks (USTS) by removal or filling in place, conduct a soil and groundwater closure investigation, and submit a closure report within forty-five (45) days of receipt of this order in accordance with Department rule 135.15. You are required to submit a tank closure notification form to the Department and provide notice to the Department at least 24 hours prior to any tank removal or soil and groundwater sampling activities. Soil and groundwater samples will not be accepted without Department supervision unless expressly waived.

2. Submit within fourteen (14) days of receipt of this order a copy of a written contract with a Department certified UST remover the terms of which provide for closure of the tank within the timeframes established above and in accordance with Department rules. A list of Department certified UST removers is available online at <http://www.iowadnr.gov/land/ust/lists.html> or you may contact the Department's UST section.

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

3. Submit past due payment of tank registration fees in the amount of \$2,835 within fourteen (14) days of receipt of this order.
4. Pay to the order of the Department an administrative penalty of \$8,700.00 within sixty (60) days of receipt of this order unless the order is appealed within thirty (30) days as provided in Division VII below

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5000.00 per day of violation for the violations involved in this matter.
2. Iowa Code section 455B.109 and 455B.476 authorize the 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 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 alternative rationales:

ECONOMIC BENEFIT:

Avoided costs:

- a. Compliance Inspection. Assuming the USTS are permanently closed as required by this order, the party has avoided the cost of completing two compliance inspections. The estimated cost per inspection is \$400. For this factor \$800 is assessed.
- b. Corrosion Protection. The party has avoided the cost of an UST system 3-year corrosion protection test. The estimated cost is \$400. For this factor \$400 is assessed.
- c. Insurance. The party has avoided the cost of at least one year of financial responsibility. The estimated cost of insurance on this system is \$1,500. For this factor \$1,500 is assessed.
- d. Line tightness tests and leak detector tests. It is not clear if these tests were conducted and just not reported or not conducted. The estimated costs if not completed would be \$500. The Department is deferring assessment until further facts are established.

Delayed Costs. The best information is that this UST system was taken out of operation in about January 2008. The UST system would have been required to be permanently closed within 45 days of having been temporarily closed for 12 months.

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

The Department is deferring an assessment for this factor until further facts are obtained and dependent upon the party's compliance with the closure requirements of this order.

GRAVITY: The party appears to have abandoned this UST system and has not responded to any of the Department's compliance notices or attempts to make contact by telephone and email. Failure to maintain financial responsibility until the UST system is permanently closed forecloses the opportunity to have a financial assurance mechanism to pay for corrective action in the event contamination from the system is documented during closure. This is a major violation. The past failure to provide documentation of line tightness tests and leak detector tests followed by the failure to confirm proper temporary closure and complete biennial compliance inspections further increases the risk of not detecting a release from the UST system. For this factor \$3,000 is assessed.

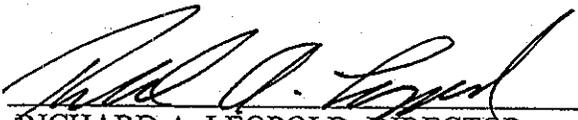
CULPABILITY: The party has failed to respond to any of the Department's compliance notices and attempts to contact him. The failure to respond can only be assumed to be intentional. For this factor \$3,000 is assessed.

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 567 IAC 7.

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 pursuant to Iowa Code sections 455B.476 and 455B.477



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 20 day of
May, 2010

Brett Cassens, David Wornson, E. Douskey, FO 6, V E.