IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF: **Dennis R. Phillips**	ADMINISTRATIVE ORDER NO. 2016 - UT - 02

To: Dennis R. Phillips, Owner
Marty's Convenience Mart
504 K Street
Riverton, IA 51650
(Hand Delivered)

Re: Underground Storage Tank Registration # 198600609

I. SUMMARY

This administrative order (Order) addresses multiple continuing violations of state law involving Underground Storage Tanks (USTs) owned by Mr. Dennis Phillips. Due to Mr. Phillips' knowing non-compliance with state regulations governing UST registration, insurance requirements and inspection requirements, the Director of the Iowa Department of Natural Resources (DNR) orders that the tanks referenced herein be properly closed and removed, and further orders Mr. Phillips to pay an administrative penalty of $10,000.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Thad Nanfito, Environ. Specialist
Iowa Department of Natural Resources
Field Office Four
1401 Sunnyside Ln.
Atlantic, Iowa 50022
Phone 712-243-1934

Relating to legal requirements:
David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Bureau
Wallace State Office Building
502 E. 9th St.
Des Moines, IA 50319
Phone: 515-725-8239

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code § 455B.476 which authorizes the Director of the DNR to issue orders directing a party to cease violation of Iowa Code chapter 455B, Division IV, Part 8 (underground storage tanks) and the rules and regulations adopted pursuant to that part and to require the party to take corrective action as necessary to ensure violations will not continue; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Marty's Convenience Mart, located in Riverton, Iowa, is a regulated retail petroleum facility with three USTs (4,000, 2,000 and 1,000 gallon tanks, respectively) installed in June 1973.

2. The facility stopped selling fuel and last paid its annual tank management fees in 2010.

3. The last and only UST compliance inspection for this site was conducted on May 21, 2009. Pursuant to Iowa law, compliance inspections are required within two years of the last inspection. Therefore, additional tank compliance inspections should have been conducted by May 21, 2011, 2013, and 2015.

4. On February 17, 2010, Mr. Phillips purchased the property, including the USTs.

5. On February 18, 2010, Mr. Phillips obtained the necessary UST financial liability insurance from the Petroleum Marketers Management Insurance Company (PMMIC).

6. On February 22, 2010, DNR staff spoke with Mr. Phillips. He explained that he had recently purchased the facility and would submit both the change-in-ownership form and proof of insurance to the DNR's UST section.

7. On August 26, 2010, an UST compliance audit was conducted by DNR staff from DNR Field Office (FO) 4. Staff noted on the field evaluation form that the diesel tank was empty and needed to be "temporarily closed."

8. On April 11, 2011, DNR headquarters staff notified DNR FO4 that insurance was cancelled for this facility and that the 2011 annual tank fees required by law were not paid.

9. On July 15, 2011, another UST compliance audit was conducted by staff from DNR FO4. Again, staff noted that the UST system was not in operation and that a temporary closure form needed to be submitted.

10. On April 17, 2012, DNR staff visited Mr. Phillips to discuss permanent closure of the tanks. A facsimile with information on tank closure financial assistance was sent to Mr. Phillips the following day.

11. On June 24, 2013, DNR headquarters staff called the facility and left a message for Dennis Phillips with the operator at the site noting that tank management fees had not been paid for the previous 3 years, that there was no current insurance for the tanks, and as such the tanks should not be receiving fuel.

12. On August 23, 2013, DNR headquarters staff sent a letter to Mr. Phillips noting that the facility compliance inspection due July 15, 2011 was delinquent.

13. On January 8, 2014, DNR headquarters staff sent another letter to Mr. Phillips noting that since compliance inspections had not been completed since May 21, 2009, the tanks would be "red tagged" for delivery prohibition on April 1, 2014.

14. On April 15, 2014, DNR headquarters staff sent a follow-up letter to Mr. Phillips regarding the delivery prohibition for the tanks and requesting back-payment of tank management fees.

15. On July 23, 2014, DNR FO4 staff met with Mr. Phillips again to discuss permanent closure of the tank system.

16. On August 25, 2014, DNR FO4 sent a Notice of Violation (NOV) to Mr. Phillips noting compliance issues and requiring permanent closure of the UST system by December 1, 2014. Mr. Phillips was also directed to pay outstanding tank management fees by September 15, 2014. The NOV was sent by certified mail which was not signed for by Mr. Phillips.

17. On September 24, 2014, a duplicate NOV was sent to Mr. Phillips by certified mail, which he again refused to sign for.

18. On December 10, 2014, the September 24, 2014 NOV was hand-delivered to Mr. Phillips. DNR staff explained to Mr. Phillips that the DNR would likely pursue UST removal via an administrative order. DNR staff further explained that the deadlines in the NOV would not be extended because the DNR had exhausted efforts to work with Mr. Phillips to achieve compliance. Mr. Phillips was instructed to follow the requirements enumerated in the NOV, to pay past due tank management fees, and to make plans to remove the tanks.

19. On May 20, 2015, DNR FO4 reconfirmed Mr. Phillips' ownership of the facility.

20. In February, 2016, Mr. Phillips refused to accept certified letters sent to him at his home and work addresses containing copies of DNR administrative orders intended to settle this matter by consent.

21. To date, Mr. Phillips has failed to comply with the NOV and the requirements of Iowa law.

IV. CONCLUSIONS OF LAW

1. The Iowa legislature established the UST program because the release of regulated substances from USTs constitutes a threat to the public health and safety and to the natural resources of the state. IC § 455B.472.

2. The Iowa legislature authorized the Iowa Environmental Protection Commission (EPC) to adopt rules relating to release detection, release prevention, and contamination correction as may be necessary to protect human health and the environment applicable to all owners and operators of USTs. IC § 455B.474(1)"a".

3. The EPC has adopted such rules at 567 Iowa Administrative Code (IAC) chapters 134, 135 and 136.

4. Pursuant to these rules, the owner or operator of a UST must have the UST system inspected by a certified compliance inspector and submit an inspection report to the DNR within 24 months of the prior inspection. 567 IAC 135.20(1). The above-stated facts establish multiple violations of this regulatory requirement.

5. Additionally, owners or operators of petroleum USTs over 1100-gallon capacity must submit a tank management fee to the DNR by January 15 each year in order to receive DNR registration tags. No fuel can be deposited in the tanks without a current registration tag, and tags must be returned to the DNR when the tanks are temporarily closed for over twelve months. 567 IAC 135(5)"b", "e". The above-stated facts establish multiple violations of this regulatory requirement.

6. Further, owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. 567 IAC 136.4(1). The above-stated facts establish continuing violations of this regulatory requirement.

7. Finally, when a UST system is temporarily closed for more than 12 months, the DNR has the authority to require the owner or operator to permanently close the UST system if the system is deemed by the DNR to no longer comply with the operational safety requirements of state law. 567 IAC 135.15(1)"c". If ordered to do so by the DNR, tank owners or operators must

permanently close the UST system at the end of this 12-month period unless the department provides an extension. *Id.* The above-stated facts establish a violation of this regulatory requirement.

V. ORDER

THEREFORE, the Director of the DNR orders the following:

1. Dennis Phillips shall pay an administrative penalty of $10,000.00 within 30 days of the date this Order is signed by the Director.

2. Dennis Phillips shall properly close and remove all USTs at the site by April 15, 2016, in accordance with 567 IAC 135.

VI. CIVIL PENALTY

1. Iowa Code § 455B.109 authorizes the EPC to establish by rule a schedule of civil penalties up to $10,000.00 that may be assessed administratively. The EPC has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Additionally, Iowa Code § 455B.477 provides for civil penalties of up to $5,000.00 per day for violations of Iowa Code chapter 455B, Division IV, Part 8 (underground storage tanks). More serious criminal sanctions are also available pursuant to Iowa Code § 455B.477. The DNR reserves its right to pursue additional penalties and sanctions pursuant to this section if Mr. Phillips fails to comply with the terms of this Order.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should be. The general categories of consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. These categories are addressed below and the administrative penalty is determined as follows:

a) Economic Benefit: Mr. Phillips has avoided costs associated with maintaining insurance for multiple tanks over multiple years and for conducting semi-annual safety inspections for each tank. A penalty of $8,000.00 is assessed for this factor.

b) Gravity of the Violations: A $1,000.00 penalty is assessed for the gravity of violations. Failure to insure and inspect USTs represents a significant risk to the health of the citizens of the state of Iowa as well as the potential for environmental degradation.

c) Culpability: A $1,000.00 penalty is assessed for Mr. Phillips' culpability. He has regularly and intentionally ignored notices from the

DNR explaining his obligations as the owner of USTs.

4. As such, an administrative penalty of $10,000.00 is imposed by this Order. Failure to assess the maximum penalty allowed for the violations listed above would threaten the integrity of the regulatory program by not providing a financial incentive for owners/operators to comply.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code § 17A and 561 IAC 7. Please note that failure to file a timely appeal within 30 days will result in you forfeiting the right to appeal this Order.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties and referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.477. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

Chuck Gipp

Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 27th day of February, 2016.

CC: DNR FO 4; Elaine Douskey; V.F