

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

<b>IN THE MATTER OF:</b>  <b>Frank Robak</b>  <b>UST # 198609752</b> <b>LUST # 9LTP16</b>	<b>ADMINISTRATIVE ORDER</b>  <b>NO. 2016-UT- <u>03</u></b>
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To: Mr. Frank E. Robak  
311 Maple Street  
Little Sioux, IA 51545

Re: Former Stuckey's of Little Sioux, 1350 Easton Trail, Little Sioux, IA  
UST No. 198609752; LUST No. 9LTP16

**I. SUMMARY**

This administrative order (Order) is issued to Mr. Frank Robak (Robak) as the Responsible Party for petroleum contamination resulting from storage tanks at the above-referenced facility. Mr. Robak has been notified numerous times by the Department of Natural Resources (DNR) of his obligations as the Responsible Party but has failed to meet State of Iowa Leaking Underground Storage Tank (LUST) regulations requiring the completion of a Risk Based Corrective Action (RBCA) site assessment and a Tier 2 Site Cleanup Report (SCR). As such, this Order requires: 1) Robak to submit the Tier 2 SCR if it has been completed; 2) Robak to contract with a Certified Groundwater Professional (CGP) to complete the Tier 2 SCR if it has not already been completed and submit the resulting Tier 2 SCR to DNR; and, 3) Robak to pay an administrative penalty of \$10,000.00. Further, Robak will remain liable for any corrective action required under Iowa law deemed necessary by the DNR based on the results of the Tier 2 SCR.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**  
Tammy Vander Bloemen  
Environmental Specialist Senior  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 E. 9th Street  
Des Moines, IA 50319  
Phone 515-725-8329

**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

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**Send payment to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 E. Ninth St.  
Des Moines, Iowa 50319  
[Please note the Order number on the  
payment]

**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**

The following relevant facts are presented in chronological order:

1. On April 29, 2011, DNR received an Underground Storage Tank (UST) closure report for the above-referenced site for tanks and piping removed in July, 2008.
2. On May 17, 2011, DNR notified Robak's CGP (GeoTek) that a Tier 1 report was required for the site. The DNR stated it would not allow a site check because the tank closure groundwater sample was not valid since it was collected from a drinking water well, not a monitoring well. Additionally, the soil toluene concentration was above the water line target level.
3. On June 27, 2011, GeoTek notified DNR that it intended to do additional groundwater sampling in mid-July but that the sampling may have to be rescheduled due to flooding.
4. On October 31, 2011, GeoTek informed the DNR that a Tier 2 SCR would be completed instead of a Tier 1 report. GeoTek was instructed that the Tier 2 SCR was due January 30, 2012.
5. On February 1, 2012, GeoTek notified DNR that it was waiting for payment from the Responsible Party (Robak) for work completed. DNR granted a request for a time extension for submission of the Tier 2 SCR. The new deadline for Tier 2 report submittal was March 19, 2012.
6. On April 23, 2012, GeoTek notified DNR that it had received payment from Robak, but additional site work was needed. DNR again granted a time

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extension for Tier 2 site assessment completion, with a new deadline for the Tier 2 SCR submittal of June 25, 2012.

7. On December 18, 2012, GeoTek provided the following information in an email to the DNR: *"This email is sent to follow up on our telephone conversation yesterday regarding the referenced site. As we discussed, a Tier 2 SCR was prepared by GeoTek and sent to site owner, Frank Robak, to obtain a signed cover page for submittal. The Tier 2 indicated a High Risk classification for an on-site water supply well and a Low Risk classification for Groundwater Ingestion to PGWS. After review of the report and discussions with GeoTek, Mr. Robak requested that we provide him with costs to abandon the on-site water well. He does not want us to send the report in with the High Risk classification.... As we discussed, GeoTek intends to provide the IDNR with information by January 10, 2013 regarding whether the well plugging will proceed. That information will also include a tentative schedule for activities at the site and report submittal."*

8. On January 11, 2013, GeoTek informed DNR that the Responsible Party would plug the well and place an environmental covenant on the property. Further, GeoTek stated that the Tier 2 report would be submitted by April 30, 2013.

9. On May 1, 2013, GeoTek informed DNR that it was establishing a payment plan with the Responsible Party (Robak) and that the Tier 2 report would be submitted by July 31, 2013.

10. On August 19, 2013, GeoTek notified DNR that it was still waiting for payment and that it had contacted the Responsible Party (Robak) regarding payment.

11. On July 23, 2014, GeoTek confirmed that it still had not been paid.

12. On July 30, 2014, DNR notified Robak that the Tier 2 report was overdue. A new submittal deadline of August 29, 2014 was established. DNR further notified Robak that failure to meet the deadline may result in legal action by the DNR.

13. On August 29, 2014, Robak left a message for DNR staff stating that he was having financial trouble and would like a 90 - 180 day time extension to complete and submit the Tier 2 report.

14. On September 2, 2014, DNR again granted a time extension for the Tier 2 report with a new deadline of February 20, 2015.

15. On February 5, 2015, DNR again granted a time extension for the Tier 2 report, with a new submittal deadline of August 20, 2015. According to the Responsible Party, he had medical issues the previous year and was unable to pay GeoTek.

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16. On August 9, 2015, DNR staff received a new time extension request from Robak seeking an additional 5-6 months to submit the Tier 2 report.
17. On August 12, 2015, DNR notified Robak and GeoTek that a final time extension would be granted, with a revised Tier 2 SCR due date of February 20, 2016.
18. On February 22, 2016, GeoTek notified DNR that no report would be coming.

**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 Iowa legislature stated the EPC's rules as authorized under 455B.474 "shall" include the establishment of criteria for classifying sites according to the release of a regulated substance that considers the actual or potential threat to public health and safety, establish that sites must be classified as either high or low risk or as "no action required" (NAR), as determined by a CGP, and establish that the CGP must submit a report to the DNR which assesses site risk and classifies the site as either low or high risk or NAR. IC § 455B.474(1)"a"(4).
4. The EPC has adopted such rules at 567 IAC chapter 135.
5. Robak was the owner of the USTs at the time the release occurred, and as such is the Responsible Party for the contamination that occurred. IC § 455B.471(6); 567 IAC 135.2.
6. At the time of tank closure, contamination due to releases from the tanks was found at the site. In the event that contamination above action levels is found at the time of tank closure, owners are required under state law to begin corrective action in accordance with 567 IAC 135.7 through 567 IAC 135.12. 567 IAC 135.15(3)"g".
7. Pursuant to 567 IAC 135.10 and 567 IAC 135.12, Robak is required to conduct a RBCA Assessment and submit a Tier 2 SCR to the DNR. The above-stated facts establish violations of these regulatory requirements.

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8. As the Responsible Party, Robak remains liable for any corrective action required under Iowa law deemed necessary based on the results of the Tier 2 SCR.

**V. ORDER**

**THEREFORE**, the Director of the DNR orders:

1. Robak shall pay an administrative penalty of \$10,000.00 within 60 days of this Order being signed by the Director.
2. If the Tier 2 SCR referenced above has been completed, Robak shall submit the Tier 2 SCR to the DNR within 30 days of this Order being signed by the Director.
3. If the Tier 2 Assessment has not been completed, Robak shall contract with a CGP to complete the work as required by 567 IAC 135.8(2) within 14 days of receipt of this Order. The Tier 2 SCR shall then be submitted to the DNR within 90 days of this Order being signed by the Director.
4. As the Responsible Party, Robak will be held accountable for any corrective action required per 567 IAC 135, including corrective action(s) associated with a High Risk or Low Risk classification.

**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 § 455B, Division IV, Part 8 (underground storage tanks). More serious criminal sanctions are also available pursuant to Iowa Code § 455B.477. The DNR retains its right to pursue civil penalties if Robak does not comply with the requirements 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: According to Robak's consultant GeoTek, the Tier 2 SCR has been finished since 2012. However, GeoTek will not release the report because Robak owes GeoTek \$8,000.00. Robak has

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avoided payment since 2011 resulting in a violation of his obligation to submit the risk assessment report to the DNR. A penalty of \$4,000.00 is incorporated to address this factor.

b) Gravity of the Violations: Based on the tank closure report in 2011, petroleum contamination exists at the site and is believed to be a result of a release from USTs that existed on site. The DNR was verbally informed by the CGP that the petroleum release is creating high risk conditions - there is a potential for adverse impact on human health and the environment. Without the SCR, the DNR cannot assess whether additional action is necessary to protect human health and the environment from the petroleum contamination. A penalty of \$3,000.00 is incorporated to address this factor.

c) Culpability: Contamination was identified in the April 2011 UST closure report. The DNR sent the first letter requiring a RBCA assessment in May 2011. Robak is aware of the contamination identified on site and has been granted numerous extensions for completion and submittal of the report since then. Robak knows the property is contaminated resulting from fuel leaks from his USTs; however, he refuses to comply with 567 chapter 135 regulations. A penalty of \$3,000.00 is incorporated to address this factor.

4. As such, an administrative penalty of \$10,000.00 is imposed by this Order. Failure to assess a penalty for the violations listed above would threaten the integrity of the regulatory program by not providing a financial incentive for responsible parties to comply with applicable regulations.

## VII. APPEAL RIGHTS

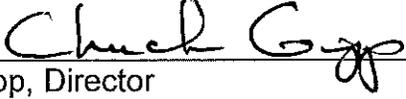
A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code § 17A and 561 IAC 7. Please note that failure to file a timely appeal within 30 days will result in you forfeiting the right to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

## VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order may result in the imposition of additional 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

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any requirements pertaining to any specific violations described in Section IV  
(Conclusions of Law) of this Order.

  
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Chuck Gipp, Director  
Iowa Department of Natural Resources

Dated this 10<sup>th</sup> day of  
May, 2016.

CC: Elaine Douskey; V.F.

