

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: TROY M. BUDE	ADMINISTRATIVE ORDER NO. 2018-UT- <u>03</u>
---	---

To: Troy M. Budde
10651 Key West Dr.
Dubuque, IA 52033
[VIA CERTIFIED MAIL]

Re: 10619 Key West Drive, Dubuque, Iowa; UST registration #
198605331; LUST # 8LTL47.

I. SUMMARY

This administrative order (Order) addresses violations of state law by the owner of the former Budde's Short Stop in Dubuque, Iowa (the Property). Mr. Troy Budde purchased the Property in 1985, and installed two new Underground Storage Tanks (USTs) on the Property in 1986. Soil sampling taken during subsequent removal of tanks from the Property showed soil contamination above Iowa corrective action limits. The Property remains categorized as a high risk to human health and the environment. As the property owner, Mr. Budde is required by Iowa law to conduct annual sampling on the Property and to provide site monitoring reports (SMRs) annually to the Department of Natural Resources (DNR). Despite ongoing conversations between the DNR and Mr. Budde's former Certified Groundwater Professional (CGP), no report has been received since 2013.

The Property was deemed eligible for funding from the Iowa Comprehensive Petroleum Underground Storage Tank Fund (Tank Fund) based on a claim for remedial benefits in October 1990. As such, all expenses for site assessment and monitoring required by Iowa law are covered through the Tank Fund, at no cost to Mr. Budde. All Mr. Budde was, and is, required to do to remain in compliance with Iowa law was, and is, to work with an approved CGP (who is also paid through the Tanks Fund) to develop annual monitoring plans and to sign the final SMR prior to submittal to the DNR. He has failed to do this since 2013. As such, as the Property owner and responsible party, he is liable for ongoing non-compliance with Iowa UST regulations.

Any questions regarding this Order should be directed to:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: TROY M. BUDDÉ

Relating to technical requirements:

Ruth Hummel, ESS
Iowa Department of Natural Resources
Wallace State Office Building
502 E. 9th Street
Des Moines, IA 50319
Phone: 515-725-8328

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. Mr. Troy Budde purchased the Property—not including USTs and dispensers that were located on the property at the time of purchase—in 1985. The USTs and dispensers were owned by Iowa Oil Company (IOCO). (IOCO has declared bankruptcy and is no longer a viable company.)
2. The IOCO-owned tank system was installed in 1970 and consisted of a single pump island with dispensers located on the east side of the station building and two USTs in a tank basin located east of the pump island.
3. In September, 1986, Mr. Budde installed two new USTs and used the existing pumps—which were purchased from IOCO independently from the purchase of the Property—to dispense fuel for sale. The new USTs were located southwest of the pump island, separate from the IOCO USTs.
4. In September, 1989, the IOCO USTs were removed. Results from soil sampling collected at the time of the removal showed petroleum contamination that exceeded Iowa corrective action levels. A subsequent Site Cleanup Report

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: TROY M. BUDDE

submitted to the DNR in 1995 confirmed contamination in excess of corrective action levels.

5. In 1998, following the submission of the first Tier 2 site risk assessment report, the site was classified as high risk.

6. Mr. Budde continued to operate the UST system at this Property until 2006. In October, 2006, the remaining UST system was removed from the Property.

7. Between November 2000 and January 2006, assessment and monitoring was conducted under the Community Remediation Project, an Iowa UST Fund lead project. This meant that Mr. Budde did not have to pay for this monitoring; it was paid for with Tank Fund monies.

8. On April 20, 2006, a revised Tier 2 Report was submitted to DNR that recommended maintaining the high risk status of the Property due to the remaining contamination and risk to human health and the environment.

9. Between August 28, 2006 and April 18, 2013, six annual SMRs signed by Mr. Budde and his CGP were submitted to DNR. None of the SMRs recommended lowering the site classification from high risk.

10. On June 28, 2016, DNR emailed Mr. Budde's CGP asking if it was still the CGP for this Property, and, if yes, why no SMRs had been received since the revised 2013 report.

11. On July 6, 2016, the CGP responded that a monitoring report was completed for the Property in August 2014 and sent to Mr. Budde for signature. Apparently the report was neither signed nor submitted to DNR.

12. The CGP also indicated that it had collected groundwater samples from the monitoring wells on the Property on December 21, 2015, and a drinking water well sample from the Property well on February 23, 2016. The CCP stated its intent was to use these samples and some of the other data collected for the Tier 3 investigation to recommend a reclassification from high risk to no further action.

13. On April 6, 2017, DNR emailed the CGP to determine the status of SMRs since nothing had been received.

14. On February 26, 2018, DNR exchanged emails with the Tanks Fund and the CGP regarding the Property. DNR noted that the City of Dubuque had extended water lines past the area of the Property and, therefore, some well receptors may have been abandoned if properties were connected to City water. The administrator of the Tank Fund agreed to attempt to obtain information from the City as to which properties had been connected to City water.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: TROY M. BUDDE

15. At the same time, the CGP stated it was going to submit a budget to the Tanks Fund to: 1) cover groundwater sampling to see if remaining contamination in groundwater is below acceptable target levels; 2) to complete a receptor survey, and 3) to submit a 2017 SMR. The CGP stated it did not have current contact information for Mr. Budde, but that it would stop by the Property to determine if Mr. Budde can be located in order to have him sign a contract for the completion of the SMR.

16. On February 27, 2018, the Tank Fund approved the budget for completion of the work, including the 2017 SMR.

17. Also on February 27, 2018, the DNR sent a Notice of Non-Compliance (NONC) letter for overdue SMRs to Mr. Budde at the following address: Hardwood Flooring Services Inc., 10626 Key West Drive, Dubuque, Iowa. This was the most recent accurate address DNR had available. The NONC required Mr. Budde to contact DNR within 15 days regarding his intent to submit the overdue 2017 SMR.

18. On March 13, 2018, DNR received the delivery confirmation for the February 27, 2018. Mr. Budde signed for the letter on March 10, 2018.

19. On March 30, 2018, DNR sent a Notice of Violation (NOV) letter to Mr. Budde requiring a schedule for submitting the 2017 SMR within 15 days of receipt, or the matter would be referred for enforcement.

20. On April 5, 2018, DNR received delivery confirmation. Mr. Budde signed for the letter on April 4, 2018. To date, DNR has received no response from Mr. Budde.

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 governing the operation of UST and liability for UST releases. The EPC has adopted such rules at 567 IAC 135.

3. Pursuant to 567 IAC 135.12(3)"f", interim monitoring is required at least annually for all sites classified as high risk. Annual site monitoring reports were not submitted for 2014, 2015, 2016, and 2017. The Property remains classified as high risk.

V. ORDER

THEREFORE, the Director of the DNR orders:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: TROY M. BUDDE

1. In order to return the Property to compliance, Mr. Budde must complete the required annual site monitoring and submit an SMR within 60 days of this order being signed by the Director.
2. As an interim measure, within 30 days of this Order being signed by the Director, Mr. Budde shall document that he has entered into a contract with a CGP to complete the work and sign and forward any SMRs that were provided to him by his CGP after 2013.
3. Within 60 days of this Order being signed by the Director, Mr. Budde shall pay an administrative penalty of \$7,000.00.

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). The DNR reserves the right to pursue additional penalties and sanctions pursuant to this section if Mr. Budde 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: Where an alleged violator realizes an economic benefit by not taking timely compliance or corrective measures, the DNR is required to include penalties which at least offset the economic benefit. Because this Property is eligible for Tank Funds, the DNR defers assessing an economic benefit because there is none or the economic benefit is nominal. However, the DNR reserves its right to assess an economic benefit penalty against Mr. Budde in the future if he continues to fail to comply with Iowa regulations governing sites with petroleum contamination.
 - b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or the public health and safety, and whether the violation threatens the integrity of the regulatory program. The responsible party,

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: TROY M. BUDDÉ

Troy Budde, has failed to conduct site monitoring and reporting, including sampling of drinking water wells receptors. The sampling is necessary to monitor site conditions and potential impact from the contamination identified at this Property. The high risk conditions associated with the contamination at this Property were identified in the Tier 2 Report and subsequent SMRs submitted by the responsible party. As of the last SMR submitted to the DNR, there were still eight (8) private drinking water well receptors identified as high risk. A penalty of \$3,000.00 is recommended.

- c) Culpability: The factors to be considered in determining the “culpability” of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. Attempts made by the CGP to keep the site in compliance with sampling and reporting requirements appear to have been ignored by the responsible party. The responsible party did not respond to the DNR NONC or the subsequent NOV. A penalty of \$3,000.00 is recommended.
- d) Aggravating Factor: The responsible party is UST Fund-eligible, and has received state funding applied to site work. There will be no additional ‘out-of-pocket’ expenses for Mr. Budde unless or until total expenses for LUST assessment, monitoring and corrective action activities exceed \$1 million dollars. There is no reason for Mr. Budde’s ongoing failure to conduct required monitoring or to submit sample analysis reports as required by Iowa law. As such, an additional \$1,000.00 is assessed due to Mr. Budde’s failure to take responsibility for completing sampling and risk assessment.

4. An administrative penalty of \$7,000.00 is imposed by this Order. Failure to assess this penalty would threaten the integrity of the regulatory program by not providing a financial incentive for owners/operators to comply with applicable UST regulations.

VII. APPEAL RIGHTS

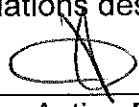
A written Notice of Appeal may be filed with the Director within 30 days of receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. Please note that failure to file a timely appeal within 30 days will result in you forfeiting the right to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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: TROY M. BUDDE

the specific violations described in Section IV (Conclusions of Law) of this Order.



Bruce Trautman, Acting Director
Iowa Department of Natural Resources

Dated this 11 day of
July, 2018.

CC: Ruth Hummell; Elaine Douskey; V.F