IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:	ADMINISTRATIVE ORDER
Medquarter, Inc.	NO. 2018-UT-04

To: Phil Wasta, Executive Director
Medquarter, Inc.
501 1st Street, SE
Cedar Rapids, IA 52401

William Daly, Registered Agent
Medquarter, Inc.
115 3rd St., SE; Suite 500
Cedar Rapids, IA 52401

Re: Non-compliance with Iowa Underground Storage Tank (UST) regulations

I. SUMMARY

This administrative order (Order) addresses violations of state law involving Underground Storage Tanks (USTs) removal. Medquarter, Inc., is the owner of the property where the tank was closed and removed. UST regulations require that any party removing an UST must be licensed in the state of Iowa. Additionally, the UST closure report that must be submitted to the Iowa Department of Natural Resources (DNR) must be signed and certified by the licensed remover who was on-site for the tank removal. In this instance, the tank was removed without a licensed remover on-site and the report was signed and certified by a party who was not licensed to conduct the removal action. The DNR considers these to be serious violations of DNR's UST regulations which, if unpunished, could undermine the state's regulatory program and result in significant risk to public health and the environment. As such, the DNR is requiring Medquarter, Inc., to pay an administrative penalty of $3,000.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Tammy Vander Bloemen, Env. Specialist Senior
Iowa Department of Natural Resources
Wallace State Office Building
502 E. 9th Street
Des Moines, IA 50319
P: 515-725-0268

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

Send payment with Order # to:
Director of the Iowa DNR
Wallace State Office Building
502 E. Ninth St.
Des Moines, Iowa 50319

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 May 14, 2018, the DNR UST section received the UST Closure Report for the former filling station and auto repair facility located at 800 3rd Ave SE, Cedar Rapids, Iowa. Brian Sherron of D.W. Zinser Company signed the report as the licensed remover. Brian Sherron is not a licensed remover in the state of Iowa.

2. On July 19, 2018, the DNR UST section sent a Letter of Inquiry (LOI) to Mr. Phil Wasta of Medquarter, Inc., which included the requirement that the company notify the DNR as to why it had hired an unlicensed party to remove the tank on the property and whether it was aware that Iowa regulations require removal actions by licensed tank removers.

3. On July 27, 2018, the DNR UST section received an email response to the LOI stating that the company was not aware of the regulatory requirements or that the remover was unlicensed.

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 IAC chapters 134 and 135.

4. 567 IAC 134.28 regulates UST removers and requires such removers to be licensed, to be present during tank removal operations, and to submit closure reports to the DNR, among other requirements. The above-stated facts establish violations of these regulatory requirements.

V. ORDER

THEREFORE, the Director of the DNR orders the following:

1. At all times in the future, Medquarter, Inc. shall comply with Iowa UST regulations.

2. Within 60 days of the date that this Order is signed by the Director, Medquarter, Inc., shall submit a penalty payment of $3,000.00 to the DNR.

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 retains its right to pursue civil penalties if Medquarter, Inc. 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: Where an alleged violator realizes an economic benefit by not complying with Iowa regulations, the DNR is required to include penalties which at least offset the economic benefit. DNR has determined that the economic benefit in this matter is minimal.

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. Regulations have been enacted in the state of Iowa to prevent the discharge of pollutants due to leaking storage tanks. The contaminants contained in such tanks can cause serious health and environmental impacts. Further, failure to penalize an unlicensed remover would encourage other parties to take similar action. While the company may have been unaware that the contractor would perform the removal action without a licensed remover, allowing companies to contract away and disavow legal obligations threatens the integrity of the regulatory program. As such, a penalty of $1,500.00 is assessed for this element.

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. The applicable UST regulations have been in place for many years, and they are available for review on the internet. The company should have ensured compliance with the regulations. A penalty of $1,500.00 is assessed for this element.

4. As such, an administrative penalty of $3,000.00 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 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 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 any requirements pertaining to any specific violations described in Section IV (Conclusions of Law) of this Order.

Bruce Trautman, Acting Director
Iowa Department of Natural Resources

Dated this 25 day of September, 2018.

CC: Tammy Vander Bloemen, David Scott; V.F.