IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

Dennis Grimm
LUST No. 7LTY57

ADMINISTRATIVE ORDER
NO. 2019-UT-03

To:  Dennis P. Grimm
  801 West 2nd Street
  Kalona, Iowa  52247

Kurt Spurgeon, Attorney
Lane & Waterman
220 N. Main Street, Suite 600
Davenport, Iowa  52801

Re:  Former Grimm Oil site in Kalona, Iowa.

I.  SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Mr. Dennis Grimm as the Responsible Party (RP) for petroleum contamination at the above-referenced, high-risk property. Mr. Grimm received a cash settlement from his insurance company for contamination at the site, and he complied with Iowa law requiring site assessment, monitoring and corrective action work at the site to address petroleum contamination. However, since early 2018, he has failed to conduct monitoring, to conduct product recovery, or to provide or implement a final corrective action design report as required by Iowa law. This Order requires Mr. Grimm to, among other things, conduct certain monitoring, petroleum recovery, and long-term planning actions as well as to pay an administrative penalty of $9,000.00. The basis for these requirements is provided below.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**
Jeff White
Environmental Specialist Senior
Iowa DNR
Wallace State Office Building
502 E. 9th Street
Des Moines, IA  50319
Phone 515-725-8325

**Relating to legal requirements:**
David Scott, Attorney
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa  52353
Phone: 319-653-2135
Send payment to:
Director of the Iowa DNR
Wallace State Office Building
502 E. Ninth St.
Des Moines, Iowa 50319

[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 facts are relevant to this enforcement action:

1. The Grimm Oil property is located at 502 East Avenue in Kalona, Iowa.

2. The facility on the property has been operated as a petroleum fueling facility since about 1960. John Dale and Shirley Helmuth sold the property to Dennis and Mary Grimm on April 4, 1986.

3. The Grimms operated the facility until an unknown date in the early 1990s. The tanks and piping were removed on April 17, 1994, while the Grimms still owned the property. They sold the property in 2007. The property is currently owned by E5 Properties, LLC of Kalona, Iowa. It is used for rental vehicles and has no known USTs.

4. On August 26, 1987, petroleum odor was detected in a residential basement across the street to the west of the property. DNR Field Office (FO) 6 staff measured petroleum vapors in that basement drain tile system. According to the current residents of the structure, and a report submitted by Delta Environmental Systems, a venting system was installed in the basement sump. DNR has been unable to determine who paid for this installation.

5. On August 28, 1987, Seneca Corporation tested the underground storage tanks on the property. The unleaded tank showed a leak of approximately 0.71 gallons per hour.

7. On September 30, 1987, DNR directed Mr. Grimm to determine the full extent of the contamination and to submit a hydrogeological assessment and recovery/cleanup plan.

8. In October, 1987, Hickok & Associates installed a free product (petroleum) recovery well and system and submitted a hydrogeological assessment to DNR. The system ran for unknown length of time but reportedly recovered no free product.

9. On January 21, 1992, DNR received notice from Douglas Tindal of Shearer & Tindal (attorneys) that FMIC was refusing to pay for any additional work on the property related to monitoring or removal of contamination.

10. On January 27, 1992, DNR responded to Mr. Tindal requiring free product recovery and site investigation to define the extent of contamination.

11. On August 12, 1992, DNR was informed that the Grimms had sued FMIC to require them to pay for additional work.

12. On November 29, 1993, DNR was notified that FMIC and Grimm Oil settled the lawsuit and that the Grimms would receive a cash payment. DNR was notified that the amount of the payment was deemed to be confidential.

13. On April 17, 1994, the underground storage tanks and product piping were removed from the property.

14. On March 3, 1995, the DNR notified Mr. Grimm that free product petroleum had been re-discovered on the property and that a free product recovery report must be submitted to DNR within 30 days. DNR received free product recovery reports in April, June, July and December of 1995.

15. On August 7, 1995, a Site Cleanup Report (SCR) was submitted to DNR. The contractor proposed a high risk classification based on DNR’s regulations.

16. On March 19, 1996, DNR accepted the high risk classification and approved passive remediation as the best available technology (BAT) to address the contamination. DNR required annual site monitoring and reporting, and monthly free product recovery reporting.

17. The DNR received free product recovery reports in September and November of 1996 and in February and July of 1997.

19. On June 29, 1998, DNR received an SMR.

20. On December 3, 2001, DNR notified Grimm that a Tier 2 site risk assessment must be submitted by June 3, 2002. Additionally, he was reminded that SMRs must be submitted annually.

21. On September 15, 2003, the Tier 2 report was submitted to DNR. DNR rejected the report because it was insufficient under DNR regulations. Mr. Grimm was instructed to address 13 separate problems/deficiencies with the report and to resubmit the report within 90 days.

22. On March 15, 2012, DNR sent Mr. Grimm a letter requiring submittal of the revised Tier 2 report and a free product recovery report, as DNR had not received any reports since 2003.

23. On June 5, 2012, DNR received a free product recovery assessment report that showed nearly 2.5 feet of free product in a sampling well on the property.

24. On August 20, 2012, the DNR received a revised Tier 2 report. It was rejected by DNR because none of the previous 13 deficiencies had been addressed.

25. On April 19, 2013, another revised Tier 2 report was submitted. It was rejected because many of the deficiencies had not been addressed.

26. On February 7, 2014, another revised Tier 2 report was submitted and rejected for the same reasons. DNR required a final Tier 2 that satisfied regulatory requirements to be submitted within 90 days.

27. On September 17, 2015, another revised Tier 2 report was submitted to DNR. This report was accepted, and the property was characterized as high risk for multiple receptors.

28. On April 12, 2016, Kurt Spurgeon, attorney for Mr. Grimm, stated via email that he represented Dennis Grimm with respect to contamination at the property and that Mr. Grimm could not continue to financially support ongoing remediation activities on the property.

29. On April 26, 2016 DNR staff met with Mr. Grimm, attorney Spurgeon, and certified groundwater professional (CGP) James Goodrich to discuss a final option for the property.

30. In September, 2016, Mr. Goodrich, DNR, and a well drilling company met on the property to conduct additional assessment and sampling.
31. On April 20, 2017, a Tier 3 remediation work plan was received by DNR and subsequently approved. The parties met two more times in 2017 to discuss the status of remediation and to focus on the site remediation. The parties agreed that corrective action must focus on avoiding contamination contact with the nearby water main and addressing contamination in the neighbor’s basement.

32. On March 19, 2018, DNR received a free product recovery report. It showed that there was still free product in two monitoring wells.

33. On September 9, 2018, DNR was informed by Mr. Goodrich that Mr. Grimm had fired him.

34. On September 24, 2018, DNR notified Mr. Grimm that he was required to maintain a CGP for the property under Iowa law, and requiring that, within 15 days of receipt of the letter, he was to provide DNR with the name of his CGP and his preferred option for addressing the high risk receptors. DNR sent a certified Letter of Non-Compliance to Mr. Grimm requiring that he contact DNR within 15 days. The letter noted that failure to respond could result in referral to DNR Legal Services Bureau for further action.

35. On November 14, 2018, DNR staff called Mr. Grimm’s attorney who stated that Mr. Grimm had decided not to move forward with remediation or to hire a CGP.

36. On January 7, 2019, DNR sent a certified Notice of Violation to Mr. Grimm requiring that he contact DNR within 15 days. Neither Mr. Grimm nor his attorney has responded.

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 chapter 135.

4. The owner and operator of the UST system are responsible for compliance with DNR’s regulations governing the closure of the UST system. IC § 455B.471(6); 567 IAC 135.2. Mr. Grimm is the RP for this property.
5. 567 IAC 135.7(5)"a" address the recovery and removal of spilled product. It requires the RP to conduct free product (petroleum) removal at a frequency determined by the recharge rate of the product and in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydro-geologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local, state and federal regulations. Unless approved by the DNR, free product assessment and recovery activities must be conducted by a certified groundwater professional. Owners and operators must report the results of free product removal activities on forms designated by the department. The above stated facts establish violations of this regulatory requirement.

6. 567 IAC 135.10(6)"h" addresses assessment of the vapor to enclosed space pathway, which is relevant to the contamination reaching the nearby basement. The section requires that unless the pathway is classified as no action required, corrective action for this pathway must be conducted. Actual receptors are subject to corrective actions which: (1) reduce groundwater concentrations beneath the enclosed space to below the target level; (2) reduce the measured soil gas levels to below the soil gas target levels; (3) reduce the indoor vapor concentrations to below the indoor vapor target level; or (4) reduce the vapor level to below 10 percent of the lower explosive limit (LEL), if applicable. Additionally, potential receptors are subject to continue monitoring requirements. The above state facts establish violations of this regulatory requirement.

7. 567 IAC 135.10(7)"h" addresses the requirements for the assessment of soil vapor to enclosed space pathway. The assessment requirements are similar to 135.10(6)"h", above. The above stated facts establish violations of this regulatory requirement.

8. 567 IAC 135.12(3)"b" addresses response actions for high risk pathways. For the groundwater to water line and soil to water line receptors, these objectives are achieved by active remediation, replacement or relocation of water line receptors from areas within the actual plume, plus some added site-specific distance to provide a safety factor to areas outside the site-specific target level line. In areas of free product, all water lines regardless of construction material must be relocated unless there is no other option and the department has approved an alternate plan of construction. If water lines and gaskets are replaced in an area of contamination, they must be replaced with water line materials and gasket materials of appropriate construction. The above stated facts establish violations of these regulatory requirements.

9. 567 IAC 135.12(3)"f" addresses monitoring requirements at certain high risk sites. From the time a Tier 2 site cleanup report is submitted, and until the DRN determines a site is classified as no action required, interim monitoring and
reporting is required at least annually for all sites classified as high risk. The above stated facts establish violations of these regulatory requirements.

V. ORDER

THEREFORE, the DNR orders the following:

1. Mr. Grimm shall hire a CGP by December 1, 2019, and shall notify the DNR of who the CGP is within 15 days of being hired.

2. Mr. Grimm shall initiate free product (petroleum) recovery and reporting, pursuant to Iowa regulations, by January 1, 2020.

3. Mr. Grimm shall conduct annual site monitoring and reporting as required by Iowa regulations, commencing February 1, 2020. The first report under this Order will be due on March 31, 2020.

4. Mr. Grimm shall work with the CGP and DNR staff to establish a long-term action plan to address high risk receptors and bring the site to closure. A Tier 3 work plan and/or a corrective action design report must be completed by July 15, 2020. The plan must be implemented and completed pursuant to its terms. Failure to implement the plan will be considered a violation of this Order.

5. Mr. Grimm shall pay an administrative penalty of $9,000.00 within 60 days of this Order being issued by the Director.

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 (UST). More serious criminal sanctions are also available pursuant to Iowa Code § 455B.477.

3. 567 IAC chapter 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. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a $9,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:
a) **Economic Benefit:** 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." In this case, the owner of the facility has failed to maintain proper pollution liability insurance and has failed to

The estimated cost for monthly free product recovery and each quarterly report is $650.00. Mr. Grimm has avoided five such reports since early 2018 for a total avoided cost of $3,250.00. The estimated cost of annual site monitoring and reporting is $2,200.00 for the report that has not been provided. Total estimated cost avoided since 2018 is $5,450.00.

As this matter is being addressed administratively, $4,000.00 is assessed for this factor.

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.

Even after 30 years, soil, groundwater, and soil vapor sampling determined that a significant petroleum contamination plume still exists under the property and it extends to the neighbor's property across 5th Street. The petroleum contamination from the release at the property has impacted the residential basement at 411 5th Street, soil contamination and free product threaten the integrity of the water main under 5th Street, and repeated assessments have determined that other high risk receptors—a sewer main and sanitary sewer service lines—are also be threatened by the contamination.

Failing to complete the required corrective actions threatens human health and safety, as well as the integrity of the UST program. As such, a $3,000.00 penalty is assessed for this factor.

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.

Mr. Grimm knows his obligations under Iowa law, and has decided to no longer comply with those requirements. He received a confidential insurance settlement and no invoices or payment documents have been provided, so the DNR has no means to determine how the settlement money was spent or how much money might be left. Regardless, the high risk conditions persist and must be addressed.

As such, a $2,000 penalty is assessed for this factor.

**VII. APPEAL RIGHTS**

A written Notice of Appeal may be filed with the Director within 60 days of issuance of this Order. The Appeal should be sent to David Scott at the address above. A contested case hearing will then be scheduled pursuant to Iowa Code Chapter 17A and 561 IAC 7. The contested case rules allow for full discovery.

**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.

[Signature]
Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this _____ day of October, 2019.

CC: Jeff White; David Scott; V.D, V.F.