IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Star Real Estate Holdings, LLC

ADMINISTRATIVE CONSENT ORDER

NO. 2019-UT-04

To: Mohammad Ilyas, Registered Agent
   Star Real Estate Holdings, LLC
   2010 Coruoy Drive
   Cedar Falls, Iowa 50613

   Mohammad Ilyas, Owner/Operator
   The Kwik Stop
   1104 Washington Street
   Waterloo, Iowa 50702

Re: Kwik Stop, 1104 Washington Street, Waterloo, Iowa; UST Registration
   198608488; non-compliance with numerous UST regulations; LUST site
   9LTS49, Tier 2 Assessment required.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa
Department of Natural Resources (DNR) and Star Real Estate Holdings, LLC
(Star Real Estate) to address violations of Iowa Underground Storage Tank
(UST) regulations including, but not limited to, failure to maintain adequate
financial responsibility (insurance), failure to conduct compliance safety
inspections, and failure to pay annual management fees.

The Order imposes an administrative penalty of $7,500.00 for past non-
compliance, requires tank closure and removal pursuant to documentation
submitted to the DNR by Seneca Companies via email on November 15, 2019,
and requires full compliance with DNR LUST requirements pursuant to the
documentation submitted to DNR via email on October 30, 2019.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**
Cara Ingle, Env. Specialist
Iowa Department of Natural Resources
Wallace State Office Building
502 E. 9th St.
Des Moines, Iowa 50319
P: 515-725-8304

**Relating to legal requirements:**
David Scott, Attorney
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353
P: 319-853-2135
Send payment with Order number 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 557 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. Star Real Estate Holdings, LLC purchased the Kwik Stop located at 1104 Washington Street in Waterloo, Iowa, on December 22, 2008.

2. Iowa regulations require UST facilities to have insurance at all times. On August 4, 2009, DNR received notification from Petroleum Marketers Management Insurance Company (PMMIC) that the facility’s pollution liability insurance had been cancelled as of July 21, 2009.

3. On April 18, 2013, during the biennial compliance inspection, the Automatic Tank Gauging (ATG) indicated a failed annual test for the super unleaded tank.

4. On October 18, 2013, DNR received notification from PMMIC that the pollution liability insurance was again cancelled, effective October 18, 2013.

5. On October 21, 2013, DNR called Mohammad Ilyas (owner) requesting proof of financial responsibility by the close business day and told him to stop receiving fuel until financial responsibility was in place. The owner said he was working to get the required corrosion protection (CP) work done on the UST system which was necessary in order to obtain insurance.

6. On November 5, 2013, DNR called the owner again requesting proof of financial responsibility. He said the CP test was being done that week and he would fax the proof of financial responsibility that day.
7. On November 6, 2013, DNR again called the owner requesting proof of insurance. He said he would contact the insurance agent to fax the proof that day.

8. On November 7, 2013, DNR received a phone call from Bill Wilson, the certified CP tester. Mr. Wilson stated that he went to test the site at the end of October but there was no power due to a broken wire. He said he is scheduled to be back at the property on November 22, 2013 to fix the wire.

9. On November 8, 2013, DNR received a phone call from Jay Shares with PDCM insurance in Waterloo. He stated they would not insure the site until a passing CP test was received. As such, DNR red-tagged the tanks preventing any fuel delivery due to the lack of insurance coverage.

10. On November 27, 2013, DNR received proof of financial responsibility with a policy period beginning November 26, 2013. As such, the owner had a lapse of financial responsibility from October 18, 2013 through November 26, 2013. DNR spoke with Bill Wilson about the CP test. He said he installed a new wiring. DNR released the site from delivery prohibition.

11. On February 23, 2015, DNR sent an email to the site owner requesting updated insurance and provided a reminder that the biennial compliance inspection was due.

12. On April 15, 2015, the owner called DNR asking about annual renewal tags since they had not been received. DNR notified him that we did not issue annual tags since proof of current financial responsibility had not been received and since the site was overdue for its compliance inspection. The owner said he would fax proof of financial responsibility.

13. On May 28, 2015, DNR received a phone call from Randolph's Oil, a fuel transporter, who had been called to the site to deliver fuel. The transporter called because there were no annual tags present on the tanks. DNR prohibited fuel delivery until the owner provided proof of financial responsibility and completed the required compliance inspection.

14. On June 2, 2015, DNR received a call from Acterra, an Iowa-licensed UST tester, requesting fuel for the tanks in order to do precision testing for the owner. The testing was required in order to obtain PMMIC insurance to operate. Acterra said they planned to be on site on June 9, 2015 to conduct the testing.

15. On June 3, 2015, DNR sent authorization to Randolph's for fuel delivery. Authorization was provided for up to 40% tank capacity for testing purposes only.
16. On June 11, 2015, DNR sent a Letter of Non-Compliance to the owner for failure to obtain financial responsibility and for failure to conduct a compliance inspection at the facility.

17. On June 19, 2015, DNR received a phone call from Seneca Environmental Company (Seneca) requesting additional fuel for testing. DNR sent another authorization for fuel delivery for tank testing purposes only.

18. On June 24, 2015, DNR received proof of financial responsibility from PMMIC with the policy beginning June 23, 2015. As such, the owner had a lapse of financial responsibility from November 26, 2014 through June 22, 2015. 2015 annual renewal tags were issued and site was authorized to operate.

19. On August 21, 2015, the biennial compliance inspection was completed by PMMIC and submitted to the DNR. Violations noted in the inspection report included leaks without containment under two dispensers and inadequate CP installation due to anode wires appearing cut on the south side of the tank bed.

20. On October 30, 2015, PMMIC provided DNR with a compliance inspection response form for overdue compliance inspection violations. Leaks within the fuel system were not addressed and it was noted that a dispenser was out of service and would need be replaced. Compliance Testing & Technologies company (CTT) completed a CP test on the system that passed.

21. On December 14, 2016, DNR received notification from PMMIC that the financial responsibility had been cancelled as of December 14, 2016.

22. On April 5, 2017, DNR staff sent a fuel delivery prohibition notice to Star Real Estate Holding, LLC, c/o Mohammad Ilyas, for failure to pay the 2017 tank management fee for the Kwik Star tank system.

23. On April 21, 2017, the Kwik Stop UST system was "red-tagged" by DNR Field Office (FO) 1 for the non-payment of the 2017 tank management fee, as well as because financial assurance for the site had lapsed.

24. On September 21, 2017, DNR received a phone call from Mike Sprague of Dick's Petroleum. He stated that the owner of the Kwik Stop had requested that he replace the ATG system at the site. He said that the red tags were still on the tanks, and that the tanks were empty. He said the owner also asked about conducting a tank lining inspection, which had never been done.

25. On September 27, 2017, DNR received a phone call from Marty Magneson of Randolph Oil asking if he was allowed to deliver fuel to the tanks on site. According to Mr. Magneson, he had removed the fuel from the tanks into one of his tanker trucks about 2-3 week prior. The tanker truck was left on site and locked up, but he was in need of it. DNR did not provide authorization for the fuel to be moved from the tanker to the tanks.
26. On September 28, 2017, DNR received a phone call from Dave Reif of Reif Oil asking if fuel on Randolph's tanker truck can be placed back into the tanks on site. DNR explained the current violations at the site and that fuel would not be allowed in the tanks. Mr. Reif stated that Tank Tech company had tested the tanks and that everything was fine. DNR requested a copy of the tank tests.

27. On October 3, 2017, the owner paid overdue 2017 tank management fees and stated he would be insuring the site through PMMIC. He stated that fuel will be needed in the tanks in order to conduct precision testing required by PMMIC. DNR sent a fuel authorization to Reif Oil, Randolph's, and the owner allowing them to place fuel from Randolph's tanker truck into the USTs for testing. The authorization stated that retail dispensing of the fuel was not allowed until the DNR authorized operation and the delivery prohibition red-tags were removed.

28. On October 4, 2017, Bill Wilson of EPS Inc. conducted CP testing on the UST system. All tanks passed. CP results were provided to PMMIC by DNR for insurance coverage.

29. On October 31, 2017, a biennial compliance inspection was completed by CTT and submitted to the DNR. Violations included no record of rectifier readings or the last two tests for CP, liquid and debris in all spill containments, and the ball float risers on all three gas tanks were not properly capped. The inspector was unable to confirm ATG operation due to no fuel in tanks.

30. On November 21, 2017, DNR received a call from the owner requesting fuel for additional testing. DNR denied authorization for additional fuel, as the previously-approved fuel for testing should not have been removed and since the owner did not have current financial responsibility so any release from the system would not be covered by insurance. DNR informed the owner that he must have a vacuum test conducted to show precision tightness.

31. On December 19, 2017, CTT tested the tanks on site. Results indicated that all three gasoline tanks had "top side leaks" due to severely corroded fill risers. The fourth kerosene tank passed the test. CTT suggested that a qualified petroleum contractor was needed to complete a comprehensive site inspection and to repair or replace some of the tank top components like spill buckets, vents, and riser pipes.

32. On November 26, 2018, DNR received a call from Dick's Petroleum to report that the site had failed its vacuum test. The Waterloo Fire Marshall had reached out to Dicks Petroleum asking what he can do to have the owner remove the tanks.

33. On December 3, 2018, staff from DNR FO1 visited the property and reported that all of the tanks were still red-tagged and that the facility was not
solving any product except for kerosene. The owner was told that he could not sell kerosene until he had proper insurance.

34. On February 19, 2019, DNR sent a Notice of Violation (NOV) to Mr. Ilyas and Star Real Estate for improper temporary tank closure, expired pollution liability insurance, and for overdue tank management fees. DNR requested a response and payment by March 29, 2019.

35. On March 7, 2019, DNR received a phone call from Jeff Siebel, Waterloo Fire Marshall, stating that the site is in violation of National Fire Protection Association (NFPA) code 30 (applicable to flammable and combustible liquids) since it has been out of service for more than 12 months. The Fire Marshall had been on-site multiple times with an UST professional to assess the work that needed to be done at the site. Mr. Siebel’s overall consensus was that no UST professional company wanted to repair the system since they could not guarantee it would pass a vacuum test. He also stated that he inspected the facility every 3 weeks while it continued to be out of operation.

36. On March 22, 2019, Dave Reif of Reif Oil provided an “Accord Certificate” to the DNR on behalf of the owner. DNR advised that this documentation did not meet the financial responsibility requirements in Iowa UST regulations and further noted that the policy did not include pollution liability protection.

37. On April 26, 2019, Dave Reif of Reif Oil provided a pollution liability insurance quotation to DNR on behalf of the owner. Again, the documentation did not meet the financial responsibility requirements of Iowa UST regulations, in part because schedule of tank details did not match the tanks at the facility.

38. Also on April 26, 2019, the owner called DNR to explain that he wanted to return the tanks to service and he said the tanks had passed all required tests. The owner provided DNR with an updated contact email address for correspondence. DNR provided the owner with tank and piping information needed for insurance and requested test results for review.

39. On April 29, 2019, the owner provided via email a physical internal inspection certificate from Tank Tech for an internal lining inspection done in September 2017.

40. On May 1, 2019, the owner provided via email a current pollution liability policy from Mid-Continent Casualty Company effective April 29, 2019. As such, the owner had a lapse of financial responsibility for the tanks from December 14, 2016 through April 29, 2019.

41. On May 9, 2019, the DNR notified the owner via email and regular mail of the return-to-service requirements for the UST system. These included the following:
a) Pay the overdue tank management fees from 2018 and 2019 totaling $2,520;
b) Complete a return-to-service form with all of the required testing documents;
c) Provide the monthly CP log from October 2017 - May 2019 and a current CP test from an Iowa licensed CP tester showing the CP system is operational;
d) Provide results of a passing tank and piping precision tightness test;
e) Provide results of a function test at 3.0gph for the mechanical line leak detectors;
f) Provide documentation that the three ball float caps have been repaired as reported on the 2017 biennial compliance inspection; and,
g) Provide a printout from the ATG system showing it is operational.

Additionally, DNR required that a site inspection be conducted by July 8, 2019.

42. On June 10, 2019, DNR received the tank management fees in the amount of $2,520.00. DNR also received a copy of the then-current rectifier log.

43. On June 11, 2019, DNR FO1 staff visited the facility. The owner said he had been in contact with Seneca about completing the tank top work referenced in 2017 to get the tanks into compliance. He said he thought that he needed the approval from DNR to start the work. DNR FO1 staff explained to him that as long as he had pollution liability insurance, he was approved to start the work on the tanks. Staff noted that all of the tanks were still red-tagged and that the ATG showed that all of the tanks are empty, except for the kerosene tank which had a small amount of liquid in the tank. The rectifier was checked and appeared to be working properly.

44. As of September 4, 2019, DNR received and has reviewed the site inspection report. DNR determined that due to the presence of soil and groundwater contamination above Tier 1 levels, a Tier 2 evaluation will be required by the owner.

45. During the months of October and November, 2019, Mr. Ilyas has stated his intention to properly close and remove the tank system, he has provided a removal agreement entered with Seneca Companies with the scheduled removal date in December 2019, and he has provided documentation required by the DNR LUST program confirming that a Tier 2 assessment and report will be developed for the site by a CGP. That report is due by March 9, 2020. In light of these developments, DNR has agreed to decrease the originally-proposed administrative penalty.
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. Iowa Code § 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. Iowa Code § 455B.474(1)a.

3. The EPC has adopted such rules at 567 IAC chapters 134 and 135.

4. 567 IAC 135.3(1)a requires that each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion.

5. 567 IAC 135.3(2)b(1)(2) requires that internally-lined tanks must be inspected every five years.

6. 567 IAC 135.3(5)b requires that the owner or operator of tanks over 1100-gallon capacity must submit a tank management fee of $65.00 per tank by January 15 of each year. The owner or operator must also submit written proof that the tanks are covered by an approved form of financial responsibility in accordance with 567—Chapter 136. The above state facts establish multiple violations of these requirements.

7. 567 IAC 135.4(2) requires corrosion protection systems to be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground. All CP systems must be tested at least every three years. Impressed current CP systems must be inspected every 60 days to ensure the equipment is running properly. Records of the operation of the CP system must be maintained to demonstrate compliance with the performance standards. The above stated facts establish multiple violations of these requirements.

8. 567 IAC 135.5(1)a Operation and maintenance of release detection equipment. Owners and operators must provide a method of release detection equipment that is installed, calibrated, operated, and maintained in accordance with the manufacturer’s instructions, including routine maintenance and service checks for operability or running condition; and meets the performance requirements in 135.5(4) or 135.5(5), with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. The above stated facts establish violations of these requirements.
9. 567 IAC 135.15(1)"a" requires that when a UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection, release detection, and financial responsibility. The above stated facts establish violations of these requirements.

10. 567 IAC 135.15(1)"c" requires that when a UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either the performance standards in 135.3(1) for new UST systems or the upgrading requirements in 135.3(2). Owners and operators must permanently close substandard UST systems at the end of this 12-month period in accordance with 135.15(2) to 135.15(5), unless the department provides an extension of the 12-month temporary closure period. Owners and Operators must complete a site assessment in accordance with 135.15(3) before such an extension can be applied for. The above stated facts establish violations of these requirements.

11. 567 IAC 135.20 requires biennial compliance inspections must be conducted within 24 months of the prior compliance site inspection. The above stated facts establish violations of these requirements.

12. 567 IAC 136.4(1) and 136.4(2) require owners or operators of petroleum USTs to 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 underground storage tanks in specified amounts at all times. The facts above establish a violation of this requirement. The above stated facts establish violations of these requirements.

V. ORDER

THEREFORE, the DNR and the owner, Mr. Ilyas, agree to the following:

1. The owner must pay an administrative penalty of $7,500.00 within 30 days of this order being signed by the Director for past violations.

2. The tank system must be permanently closed pursuant to the requirements in 567 IAC 135.15(2). The agreement and email confirmation submitted to DNR by Seneca Companies states that the system is scheduled for removal in December, 2019. To allow for any unforeseen circumstances, this Order requires the tank system to be properly closed and removed by January 31, 2020, at the latest.

3. The owner must complete the Tier 2 site assessment required by the DNR LUST program by March 9, 2020.
VI. 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 2 (underground storage tanks). More serious criminal sanctions are also available pursuant to Iowa Code § 455B.477.

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. 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 $10,000.00 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 operated without proper pollution liability insurance. Star Real Estate benefited economically by not obtaining pollution liability insurance, and he sold fuel that was for testing purposes only and not for retail sale.

Liability insurance is estimated to cost $3,500.00 per year. Coverage had lapsed for the tanks for at least 2.5 years. As such, a minimum economic benefit of $8,750.00 was enjoyed by Star Real Estate. Since DNR intends to address the violations 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. The owner has consistently ignored DNR correspondence explaining requirements to
come back into compliance. The tanks at this property are 41 years old and the system has copper lines. The owner has neglected to maintain the system as required, which renders this system inoperable and substandard. It is unknown at this time if the external CP system has been maintained over the last 12 months since the last test in 2017 indicated that it was shut off.

Further, failing to maintain financial responsibility is a direct violation of IAC Chapter 136. The integrity of UST program relies on the requirement to have funding available to correct any accidental release of fuels. A lack of financial responsibility could, and likely would, postpone the cleanup of any release at this facility.

Finally, fuel was authorized for testing purposes only, but the owner appears to have sold the fuel and there are no records to show he had conducted any leak detection. This site has a history of leaks under the dispensers without containment, based on third-party compliance inspections completed in 2013 and 2015.

As such, $3,000.00 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. The owner was aware that his site was out of compliance and red-tagged; yet he sold fuel anyway from one of his tanks until DNR field office staff verbally told him he could not sell or receive fuel since he did not have insurance. Additionally, the owner has repeatedly failed to comply with 567 Chapter 135 and 136 regulations.

Multiple leaks have been documented under the dispensers at the site and the owner has failed to maintain leak detection or to install containment to minimize the environmental impact.

In light of recent efforts by the owner to properly remove the tank system and to comply with LUST programmatic requirements, $500.00 is assessed for this factor.

VII. APPEAL RIGHTS

As this Order is entered by consent of the parties, it cannot be appealed.

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.
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: STAR REAL ESTATE HOLDINGS, LLC

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. DNR reserves the right to impose additional requirements on the owner not addressed in this Order based on the results of the compliance inspections required by this Order.

Kayla Lyon, Director
Iowa Department of Natural Resources

Signature

Dated this 3rd day of December, 2019.

Muhammad Ilyas
Print Name
For: Star Real Estate Holdings, LLC

Dated this 25th day of November, 2019

CC Cara Ingle, David Scott; V.A, V.B, V.C, V.H, V.I.