

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Cooperative Energy Company	ADMINISTRATIVE CONSENT ORDER NO. 2020-UST- <u>03</u>
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To: Brian Dressen, Registered Agent
Cooperative Energy Company
1708 Pierce Avenue
Shelby, Iowa 51249

Re: Failure to comply with Iowa regulations applicable to the installation and operation of four Underground Storage Tanks (UST) at a new facility in Spencer, Iowa.

I. SUMMARY

This administrative order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Cooperative Energy Company (CEC) to address non-compliance with DNR UST regulations. The Order requires the payment of an administrative penalty of \$10,000.00. The basis for the penalty is explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

James Gastineau
Environmental Specialist Senior
Wallace State Office Building
502 E. 9th Street
Des Moines, IA 50319
Phone 515-725-8202

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353
Phone: 319-653-2135

Send payments 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]

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: COOPERATIVE ENERGY COMPANY

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 UST system is located in Spencer, Iowa.
2. On May 19, 2019, DNR received a Notification of Intent to install tanks from CEC.
3. On June 13, 2019, DNR issued an UST installation authorization letter to CEC. Installation was authorized to begin on July 17, 2019. The authorization letter noted that the USTs could not be operated without DNR approval and until registration tags were issued and affixed to the USTs.
4. On December 19, 2019, DNR contacted CEC and requested an update on UST installation.
5. On December 20, 2019, DNR received a phone call from Tim Petersen of UST Testing Services, Inc. (UST Testing) that Westmor Industries (Westmor) had contacted him to complete a final third-party inspection. Mr. Petersen stated that since he had not been the party that completed the first two inspections of the UST system, he would not do the final inspection.
6. On the same day, DNR received a phone call from Randy Shervey with Westmor. Mr. Shervey had been brought on to assist with installs/compliance. DNR explained Iowa's requirements and explained what was needed for this install.
7. On January 6, 2020, DNR staff from Field Office (FO) 3 visited the site and found the site to be operating without tags and indicated there had been a possible overfill event at the diesel tank.
8. On January 7, 2020, DNR notified CEC by email that a delivery prohibition was in effect immediately. A Notice of Violation (NOV) was issued to CEC for operating unregistered tanks without tags or financial assurance (insurance), as required by Iowa law. Red tags were affixed to fill ports to prevent delivery of fuel.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: COOPERATIVE ENERGY COMPANY

9. On January 8, 2020, DNR staff spoke with representative from Westmor. The company admitted it did not have the site inspected by a third-party installation inspector as required by Iowa law. Westmor had assumed that Protanic, Inc.'s (Protanic) testing was sufficient for the necessary third-party inspection. DNR explained Protanic is not an Iowa-licensed UST Installation contractor or installation inspector and is not qualified to perform the installation inspection. DNR further advised Westmor that the site needed to be inspected by an Iowa licensed installation inspector.

10. On the same day, DNR received financial responsibility documentation for the UST system via email from CEC. The retroactive policy began on January 6, 2020. As such, the facility had been operating without financial responsibility (insurance) for at least a month in violation of Iowa law.

11. On January 9, 2020, DNR staff spoke with Wade Netten from CEC and explained that DNR was still waiting on the fuel delivery records requested, and that the site would not be allowed to operate until all of the install paperwork had been received and processed. DNR was notified on the call that Westmor would be paying the past-due tank registration fees, and the company informed Mr. Netten that a \$250.00 per tank late fee had also been assessed. Mr. Netten stated he would be sending records for all fuel deliveries to this site as soon as possible.

12. On the same day, DNR staff received a phone call from Tim Petersen of UST Testing. He stated that he had again been contacted by CEC to do the third-party inspection required for the site. DNR instructed him to complete the inspection and make any notes he could about the installation.

13. On January 10, 2020, DNR received a phone call from UST Testing regarding the inspection. UST Testing was unable to gain access to the Automatic Tank Gauge (ATG) system to check leak detection since there was no one on the site at the time of the inspection. UST Testing reported that fuel was found in two dispensers. DNR advised the inspector to take photos and submit them with the inspection report to DNR.

14. On January 13, 2020, DNR received an email from UST Testing indicating issues were found during the installation inspection. DNR emailed Brian Dressen (CEC) and Randy Sheavers (Westmor) with next steps and advised them that the site needed to be re-inspected after all noted items were fixed.

15. On the same day, DNR received fuel delivery documentation from CEC. Fuel had been delivered on December 6, 2019, and January 3, 2020.

16. On January 14, 2020, DNR central office UST staff received a call from FO 3 staff. Westmor had notified the FO that the ATG system was repaired and was now functional. Westmor staff also stated that they had contacted CEC

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: COOPERATIVE ENERGY COMPANY

to notify them. DNR central office UST staff explained to FO staff that there were additional requirements that must be addressed prior to reopening the facility.

17. On the same day, DNR received install paperwork with tank fees, testing reporting, and install photos. DNR also received additional fuel delivery information showing that fuel was delivered on August 7, 2019 as ballast to hold the tanks in place during the installation process.

18. On January 15, 2020, DNR requested a second third-party installation inspection including photos from UST Testing in regards to fuel found in dispenser three and four and other piping issues noted in prior inspections. Nick Petersen from UST Testing provided photos from the inspection.

19. On January 17, 2020, DNR contacted CEC and Westmor requesting ATG printouts showing the tank/piping leak detection was functioning properly. Westmor provided a screenshot of the Tank Monitor screens showing sensor status, and passing tank/piping leak detection tests.

20. On January 21, 2020, DNR sent a letter ending the delivery prohibition to CEC and issued tank tags for the new UST system.

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 chapter 135 and chapter 136.

4. 567 IAC 135.3(3)"c" requires an owner or operator who brings into use an underground storage tank after July 1, 1985, to complete and submit to the department a copy of the notification form provided by the DNR within 30 days of installing the tank in the ground. Additionally, the owner or operator is prohibited from allowing the deposit of any regulated substance into a tank without prior approval of the DNR or until the tank has been issued a tank registration tag and is covered by an approved financial responsibility mechanism. The above-stated facts establish violations of these regulatory requirements.

5. 567 IAC 135.3(3)"d" requires owners and operators of new UST systems to certify in the notification form compliance with the following

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: COOPERATIVE ENERGY COMPANY

requirements: (1) installation of tanks and piping pursuant to 135.3(1)"e"; (2) cathodic protection of steel tanks and piping pursuant to 135.3(1)"a" and "b"; (3) financial responsibility as required by 567 IAC 136; and, (4) release detection pursuant to 135.5(2) and 135.5(3). The above-stated facts establish violations of these regulatory requirements

6. 567 IAC 135.3(3)"e" establishes that all owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping comply with the requirements in 135.3(1)"d." The above-stated facts establish violations of this regulatory requirements

7. 567 IAC 135.3(3)"j" establishes that it is unlawful for a person to deposit or accept a regulated substance in an underground storage tank that has not been registered and issued permanent or annual tank management tags in accordance with rule 567—135.3(455B). The above-stated facts establish violations of these regulatory requirements

8. Finally, 567 IAC 136.4(1) and 136.4(2) require owners and 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 above-stated facts establish violations of these regulatory requirements

V. ORDER

THEREFORE, the DNR orders and CEC agrees to the following:

1. CEC shall pay an administrative penalty of \$10,000.00 to the DNR within 30 days of this Order being signed 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: COOPERATIVE ENERGY COMPANY

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."

The tank owner avoided costs for UST installation inspections. Once the tank system was installed and buried, it became impractical to uncover and test the system. As such, \$3,000.00 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.

This tank owner has multiple UST facilities within the state of Iowa and is or should be aware with UST operation requirements. Failure to have financial responsibility while fuel is in the system presents a significant risk to the owner, the state, and the public. Further, inspections and testing completed after the facility began operating identified faulty equipment which required repair. This risk to the public and environment could have been avoided had the owner followed proper installation and installation inspection protocol. Non-compliance with these regulations also threatens the integrity of the regulatory program. 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.

Again, this owner has multiple UST facilities within the State and is or should be aware of UST installation and operation requirements. In fact, the owner knowingly operated the unregistered tanks without financial responsibility and without providing required installation documents to the DNR. As such, \$3,000.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: COOPERATIVE ENERGY COMPANY

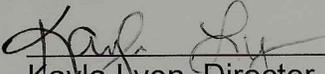
- d) Aggravating Factor: Operating without financial responsibility and allowing fuel deliveries when the site had not been approved for use by the DNR is a very serious violation and of concern to the UST program. As such, \$1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

As this Order is entered into by the consent of the parties, there is no right to appeal the 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. This Order does not address or in any way affect Leaking Underground Storage Tank (LUST) liability should contamination be found on the site.



Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 6th day of
April, 2020.



Brian Dressen
Cooperative Energy Company

Dated this 27 day of
March, 2020.

CC: James Gastineau; David Scott; V.A, V.B, V.I.