

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

IN THE MATTER OF: Doc's Stop, Inc.	ADMINISTRATIVE CONSENT ORDER NO. 2020-UT- <u>04</u>
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To: Kendall J. Doolittle, Registered Agent/ Owner
Doc's Stop, Inc.
407 Closz Drive
Webster City, Iowa 50595

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

I. SUMMARY

This administrative order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Doc's Stop, Inc. (Doc's) to address non-compliance with DNR UST regulations. The Order requires the company to comply with UST regulations in the future, to provide a list of certified operators, and it requires the payment of an administrative penalty of \$3,500.00. The basis for the penalty is explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bill Gross
Environmental Specialist Senior
Iowa DNR Field Office 5
Wallace State Office Building
502 E. 9th Street
Des Moines, IA 50319
Phone 515-725-0271

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: DOC'S STOP, INC.

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 Ames, Iowa. It includes four USTs and five dispensers with nozzles.

2. On July 5, 2017, DNR Field Office (FO) 5 staff conducted an inspection to follow up on a Petroleum Marketers Mutual Insurance Company (PMMIC) compliance inspection. DNR determined that Doc's had not responded to deficiencies noted by PMMIC in a timely manner. Several piping sump alarms were found engaged due to water intrusion. The site manager was given the PMMIC response form and informed that it must be completed by July 15, 2017.

3. On July 6, 2017, Kendall Doolittle contacted FO5 by phone and reported that Midwest Liquid Systems would be addressing the issues noted during the inspection. Also, a letter of noncompliance was issued to Doc's for failure to respond to a compliance inspection report within 60 days.

4. On July 31, 2017, a completed PMMIC response form was received from Midwest Liquid Systems.

5. On March 1, 2019, Mr. Doolittle contacted DNR about overdue compliance items involving sumps and spill basins. DNR's central office granted an extension for all compliance items related to sumps and spill basins until April 15, 2019.

6. On April 29, 2019, DNR received a complaint from the City of Ames, Iowa, concerning a store attendant's failure to adequately respond to a fuel spill into a storm sewer to which the city had responded.

7. On May 22, 2019, DNR FO5 staff conducted an inspection in response to the City of Ames' complaint, as well as to follow up on deficiencies noted in a recent PMMIC compliance inspection report. A lone store attendant was present and the following observations were made: 1) several nozzles were bagged (closed); 2) a diesel fuel dispenser hose was wet with fuel leakage; 3) all

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DOC'S STOP, INC.

four spill basins contained an inch or two of water and there was no basin inspection log available; 4) there was only one employee present, and he was not a certified operator; 5) the on-site attendant said he was not informed about how to address an emergency situation such as a fuel spill.

8. On June 5, 2019, DNR FO5 staff issued a Notice of Violation (NOV) to Doc's for failure to respond to deficiencies in a compliance inspection report and for failure to have required operator training. A complete compliance inspection response was required to be submitted by June 30, 2019. No response was received by that deadline.

9. On July 10, 2019, FO5 staff spoke to Kendall Doolittle by phone and discussed spill basin maintenance and operator training. Mr. Doolittle reported he would be using the Iowa State University on-line operator training program. He was granted another month (until August 10, 2019) to submit the PMMIC response form. No response was received by that deadline.

10. On January 23, 2020, DNR FO5 staff again visited the facility. The store attendant could not provide proof of training. He agreed to have Mr. Doolittle send it to DNR. Nothing was received by DNR.

11. On January 29, 2020, DNR FO5 issued an NOV to Doc's for failure to respond to a compliance inspection and failure to comply with operator training regulations. The NOV included a response deadline of February 15, 2020, and noted that failure to comply would result in referral to DNR's Legal Services Bureau for enforcement.

12. On February 6, 2020, Kendall Doolittle informed DNR FO5 staff by phone that the Ames store manager resigned. Information about approved UST trainers was sent to him and he was given until the end of the month to respond. No response was received.

13. On June 3, 2020, DNR FO5 staff visited the facility and met with the new manager Greg Larsen, who was the only operator present. Mr. Larsen reported he had failed the on-line certification test so was not a certified operator. He was going to test again. He said there are two certified operators for the store, but he had their certificates at home. (He emailed FO5 staff the two certificates on 6/4/20.) Mr. Larsen was unable to provide the emergency response (spill) guidance for operators. The automatic tank gauge (ATG) showed passing CSLD tests (0.2 gph) earlier in the day. It also showed a low fuel level alarm for Tank 2 and for piping system alarms. The dispensers had no sign of leakage. The sumps had only small amounts of water. The four spill basins contained 1-2" of water each, except the SE basin contained about 1" of fuel. The northeast basin drive-plate area was damaged.

14. On June 5, 2020, Greg Larsen emailed FO5 his operator certificate, which he had just obtained.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DOC'S STOP, INC.

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.

4. 567 IAC 135.4(6)"e" addresses the requirement for an UST facility to maintain a certified UST operator on-site at all times. In particular, the rule states that, for staffed facilities, a "Class C" operator must be on site whenever the UST facility is in operation. The facts above establish a violation of this regulatory requirement.

5. 567 IAC 135.4(7)"c" addresses the requirement for an UST facility to have documentation of operator training readily available on-site at all times. The facts above establish a violation of this regulatory requirement.

6. 567 IAC 135.20(3) addresses the requirement that UST facilities respond to compliance inspection report deficiencies in a timely manner (60 days or another approved schedule). The facts above establish a violation of this regulatory requirement.

V. ORDER

THEREFORE, the DNR orders and Doc's agree to the following:

1. Hereafter, Doc's will respond to compliance inspection deficiencies within 60 days (or another Iowa DNR approved schedule). Failure to do so will be considered a violation of this Order and applicable Iowa law.

2. Within 45 days of the date this Order is signed by the Director, Doc's will submit to DNR FO5 the emergency response/spill instruction guidance for facility operators and a statement that at least one certified operator will be on-site whenever the store is operating. Failure to comply with training requirements, or failure to have a certified operator on site during operation will be considered a violation of this Order and applicable Iowa law.

3. Doc's will pay an administrative penalty of \$3,500.00 according to the following payment plan. \$500.00 will be paid per calendar month, due on the first of each month. The first payment will be due on August 1, 2020. Payments

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DOC'S STOP, INC.

will continue until the penalty amount is satisfied. The penalty may be paid in full at any time. Late payments will be considered a violation of the terms of this Order. Payment should be made out to "Director, Iowa DNR" and be delivered to the address on the first page of this Order. Include the Order number for reference.

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 \$3,500.00 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."

DNR estimates economic benefit based on avoided costs resulting from failure to respond to compliance inspection reports in a timely manner.

As such, \$1,500.00 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.

Failure to comply with UST facility operation requirements including

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DOC'S STOP, INC.

operator training and compliance inspection follow-up undermine the release prevention goal of the UST regulatory program.

As such, \$1,000.00 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 of this facility was repeatedly informed of the regulatory requirements and granted numerous time extensions to respond. Responses, if any were received, were inadequate. Additionally, the owner was aware of the certification requirements for on-site operators.

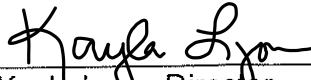
As such, \$1,000.00 is assessed for this factor.

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.



Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 21st day of
July, 2020.



Kendall J. Doolittle, Owner
Doc's Stop, Inc.

Dated this 10 day of
July, 2020.

CC: Bill Gross; David Scott; V.A, V.B, V.I.