

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

ADMINISTRATIVE ORDER

PROFUEL THREE, INC. and
SEAN CHINNA

No. 2024-UST-03

UST Registration no. 198602278

To: Profuel Three,
Inc. 1003
Summer St.
Burlington, IA 52601

Sean Chinna
1703 Mt. Pleasant
St. Burlington, IA
52601

I. SUMMARY

This Administrative Order is issued by the Iowa Department of Natural Resources (DNR) to Profuel Three, Inc. ("Profuel") and Sean Chinna to resolve certain violations of Iowa law regarding Underground Storage Tanks (USTs). As detailed below, S&R Inc. and Mr. Chinna shall: (1) follow the requirements of 567 Iowa Administrative Code (IAC) chapter 135 to either bring the site's USTs into compliance or permanently close them, (2) submit required documentation, and (3) pay a \$10,000 civil penalty.

Relating to technical requirements:

Terry Jones, Env. Specialist Senior Iowa
Department of Natural Resources DNR
Field Office 6
1023 W. Madison
Washington, Iowa 52353
319-653-2135

Relating to legal requirements:

Bradley Adams, Attorney
Iowa Department of Natural Resources
6200 Park Ave. Ste. 200
Des Moines, IA 50321

Payment of penalty to:

Director of the Iowa DNR
6200 Park Ave. Ste. 200
Des Moines, IA 50321

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 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, or “USTs”) 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 section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Profuel is an Iowa Corporation that owns a convenience store known as “Gasland” at 1003 Summer Street in Burlington, IA (“the site”). There are three USTs (12,000, 10,000, and 6,000 gallons) at the site. The site has a registration number of 198602278. Sean Chinna is listed as an Agent, President, and Secretary for Profuel Three, Inc.
2. On June 19, 2020, DNR Field Office 6 (FO 6) issued a Notice of Violation (NOV) to Profuel for its failure to maintain financial assurance pursuant to Iowa law. Profuel was notified at this time that it would be placed on delivery prohibition, otherwise known as being “red tagged,” as red tags are placed on USTs to notify delivery drivers of a site’s prohibition status. Josh Sobaski, Environmental Specialist with FO 6, placed red tags on the UST system at this site upon issuance of the NOV.
3. On September 9, 2020, Mr. Sobaski removed the red tags from the site’s USTs after Profuel re-established financial assurance.
4. On June 4, 2022, Profuel’s financial assurance policy (Nautilus Ins. Co. policy CST2018422-14 (UST FA)) expired.
5. On July 11, 2022, the DNR’s UST Central Office sent FO6 a request to place the site’s UST system on delivery prohibition for failure to maintain financial assurance.
6. On July 12, 2022, Mr. Sobaski red tagged the site’s USTs.
7. On March 16, 2023, FO 6 received complaint No. 31810, which alleged that the site’s tanks were leaking.
8. On March 28, 2023, FO 6 Environmental Specialist Senior Terry Jones investigated complaint No. 31810. While no leaks were observed, Mr. Jones noted that there was between 26 and 36 inches of active product, as measured by stick readings, categorizing them as “active” under Iowa law and regulation. Mr. Jones further observed that the cathodic protection (CP) and release detection (RD)

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: S&R TWO Inc. and SEAN CHINNA

systems were not operating, and that CP and RD records had not been maintained at the site. Upon questioning, the site's manager Steve Wick indicated the USTs were not in use, but were also not in compliance with Iowa's UST out-of-service regulations.

9. On April 13, 2023, FO 6 issued an NOV to Profuel for being out of compliance with Iowa's temporary closure regulations for USTs.
10. On August 11, 2023, FO 6 sent a second NOV to Profuel for still being out of compliance with the temporary closure rules. Additionally, because the site had been temporarily closed for more than one year, permanent closure was now required. The NOV requested that Profuel respond with its intent to permanently close the site's USTs by September 1, 2023.
11. On September 19, 2023, FO 6 Environmental Specialist Anthony Kerker visited the site with Mr. Jones and measured the product within the tanks. Each tank contained between 13 and 31 inches of product, a lower amount than what had been previously measured since the UST system's cessation of use. The reason for the reduced product measurement is unknown.

IV. CONCLUSIONS OF LAW.

1. Iowa Code section 455B.474 authorizes 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. The EPC has adopted such rules at 567 IAC 135.
2. 567 IAC 135.4(2)(a) 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."
3. 567 IAC 135.4(12)(a)(2) requires overfill prevention equipment to be tested every three years.
4. 567 IAC 135.4(12)(b)(1) requires USTs that begin operations before June 23, 2021 to be tested for spill prevention, and to have the tank's overfill prevention equipment inspection conducted by October 13, 2021.
5. 567 IAC 135.4(13) requires owners and operators to conduct annual and monthly walkthroughs for periodic operation and maintenance checks.
6. 567 IAC 135.5(1)(a)(4) requires annual testing of UST release detection equipment.
7. 567 IAC 135.5(2)(a) requires USTs to be monitored for release detection every 30

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: S&R TWO Inc. and SEAN CHINNA

days.

8. 567 IAC 135.5(2)(b)(1)(2) requires UST pressurized piping to have annual line tightness testing or monthly monitoring.
9. 567 IAC 135.5(5)(a) requires UST mechanical line leak detectors to be tested annually.
10. 567 IAC 136.4(1) requires UST owners/operators 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” USTs.

The above-stated facts establish violations of these sections of the Iowa Administrative Code.

V. ORDER

THEREFORE, the DNR orders the following:

1. If the site’s USTs are in active status, Profuel and Sean Chinna must:
 - a. Come into compliance with UST regulations, including but not limited to 567 IAC 135.15(1)(f)(1-13); and,
 - b. Submit required documentation verifying compliance with 567 IAC Chapters 135 and 136, respectively. Submittal must be provided within 60 days receipt of this Order. The site’s UST systems shall neither be operated nor receive fuel until a return to service form is provided by a licensed installer and compliance is confirmed by the DNR.
2. If the site’s USTs will not be returned to service, Profuel and Sean Chinna must:
 - a. Immediately remove all remaining regulated substances from the site’s USTs and provide documentation to FO 6 verifying that the USTs are in compliance with Iowa regulation (i.e. less than one inch of product remaining) within 10 days of the effective date of this Order, and;
 - b. Submit DNR Form 542-1308 Notification of Tank Closure or Change-in-Service to the DNR UST Section, ustoperations@dnr.iowa.gov. The form must include the date scheduled for the closure of the UST system 30 days prior to closure activities beginning, and;
 - c. Complete permanent closure activities within 120 days of the issuance of the Order unless otherwise approved by the DNR.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: S&R TWO Inc. and SEAN CHINNA

Pay a \$10,000 administrative penalty within 30 days of the Director signing this Order

VI. PENALTY

1. Iowa Code section 455B.477 provides for civil penalties of up to \$5,000.00 per day for violations of Iowa Code chapter 455B, Division VI, Part 8 (underground storage tanks).
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty of \$10,000.00.
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 for 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. The administrative penalty assessed by this Order is determined as follows:
 - a. Economic Benefit: Economic Benefit: 567 IAC chapter 10 requires that the DNR consider the costs saved or that were likely to be saved by noncompliance. 567 IAC 10.30(1) states that “where a violator realizes an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties to offset the economic benefit.” 567 IAC 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.”

The last three-year CP evaluation was completed in March of 2018 and should have been conducted again by March of 2021. This testing was not completed. The cost of a three-year survey is between \$800.00 - \$1,000.00. The annual premium for financial assurance is between \$2,000-\$3,000. There would be a delayed cost of \$5,000.00 dollars (contractor estimate) to perform equipment testing and certify compliance with 567—135 requires operational requirements. These costs would be substantially higher if repairs are needed. The economic benefit to not complying with DNR UST regulations is approximately \$9,000.00. Even though the economic benefit exceeds the administrative threshold, DNR has determined an administrative order is the appropriate enforcement action.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: S&R TWO Inc. and SEAN CHINNA

As such, \$4,000 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 public health and safety, and whether the violation threatens the integrity of the regulatory program.

The purpose of these rules is to protect the public health and safety and the natural resources of Iowa by timely and appropriate detection, prevention and correction of releases of regulated substances from USTs. This facility's failure to take necessary and timely actions to return to and maintain compliance with UST regulations presents an elevated risk of harm to the environment, public health and safety, and threatens the integrity of the UST regulatory program.

As such, \$3,000 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 of the violator, and whether the violator has taken remedial measures to address the harm caused by the violations.

The DNR has made numerous attempts to connect and discuss the above-mentioned violations with Profuel. However, Profuel and Mr. Chinna have failed to communicate with the DNR. This demonstrates the company's complete lack of interest in achieving or maintaining compliance with UST requirements. Neither Profuel nor Mr. Chinna have taken remedial measures to return to compliance.

As such, \$3,000 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476 and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: S&R TWO Inc. and SEAN CHINNA

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order may result in the imposition of further administrative penalties or referral to the Iowa Attorney General per Iowa Code section 455B.477 to obtain injunctive relief and/or civil penalties.

Kayla Lyon, Director
Iowa Department of Natural Resources