

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

ADMINISTRATIVE ORDER

S&R TWO Inc. and

SEAN CHINNA

No. 2024-UST-02

UST Registration no. 198602279

To: S&R Two Inc.
1703 Mt. Pleasant
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 for the DNR
6200 Park Ave., Ste. 200
Des Moines, IA 50321
Phone: (515) 664-8894

Payment of penalty to:

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

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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) 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. S&R Two is an Iowa Corporation and the owner of two convenience stores operating under the name “Gasland” in the Burlington area. Each location has UST systems that have been “Out of Service,” in temporary closure, and without financial assurance since August 2019. Physical store locations include: 1703 Mt. Pleasant St. (Reg #198602276) and 1204 N. 8th St. (Reg #198602279), respectively. This referral discusses 1204 N. 8th St., UST Registration no. 198602279 (“the site”). Sean Chinna is listed as the site owner for both locations in the DNR’s UST database.
2. On March 17, 2017 DNR’s UST Section sent Field Office Six (FO6) Work Request (WR) no. 3827, requesting that USTs at the site be placed on delivery prohibition, otherwise known as being “red tagged,” for failing to maintain financial responsibility (FR). The WR was assigned to FO6 Environmental Specialist Senior Terry Jones.
3. On March 30, 2017, Mr. Jones traveled to the site and placed red tags on the site’s tank system, denoting the USTs at the site were on delivery prohibition.
4. On May 15, 2019, the site came into FR compliance with the filing of Liberty Surplus Ins. Corp FR policy TXECHB12038218. No record shows that the DNR ever removed the tags from the site’s tank system.
5. On August 15, 2019, Liberty Surplus Ins. Corp FR policy TXECHB12038218 expired.
6. On September 6, 2019, DNR’s UST section places the site back on delivery prohibition and red tags are placed back on the site’s tank system.
7. On September 19, 2023 – Mr. Jones and FO6 Environmental Specialist Anthony Kerker visit the site and confirm the USTs are still present and out of service. The red tags were still present on the UST fill tubes. The cathodic pressure system was not operational.
8. On September 25, 2023, FO6 sent a Notice of Violation to S&R Two for failing

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to comply with proper temporary closure requirements, and failure to maintain FR.

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 135.15(1)(e) states that a tank system must be permanently closed according to 567 IAC 135.15(2) when a tank system has been temporarily closed for more than twelve months.
3. 567 IAC 135.15(1)(e) states that a tank system must be permanently closed according to 567 IAC 135.15(2) when a tank system has been temporarily closed for more than twelve months
4. 567 IAC 135.15(1)(b)(4) states that “when a UST system in compliance with new tank standards is out of service for less than three months, owners and operators must...maintain financial responsibility...in accordance with [567 IAC 136].”
5. 567 IAC 135.15(1)(b)(6) states that “when a UST system in compliance with new tank standards is out of service for less than three months, owners and operators must...continue to have compliance inspections conducted as required in [567 IAC 135.20].”
6. 567 IAC 135.15(1)(c)(4) addresses requirements for owners and operators when a UST system is out of service for three months or more. This section requires owners/operators to submit a temporary notification form to the department and to certify that the “corrosion protection system is being maintained in accordance with subrule 135.4(2)...[including] documentation that electricity is being maintained to operate the impressed current cathodic protection system if present.”
7. 567 IAC 135.15(1)(c)(6) addresses requirements for owners and operators when a UST system is out of service for three months or more. This section requires owners/operators to submit a temporary notification form to the department and to certify that the UST system has financial responsibility as required by 567 IAC 136.

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

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V. ORDER

THEREFORE, the DNR orders the following:

1. Within 120 days of the effective date of this order, S&R Two Inc. and Sean Chinna shall either follow the requirements in 567 IAC 135 to bring the UST system back to active service, or the requirements in 567 IAC 135 to permanently close the UST system.

If the Responsible Party intends to open the facility, it is required to:

- a. Secure financial responsibility prior to operation, and
- b. Submit a written plan to the DNR for approval that shall:
 - i. Ensure compliance inspections are completed in a timely fashion.
 - ii. Outline an operation and maintenance schedule that ensures compliance with all applicable requirements of 567 IAC 135, including documentation that electricity has continuously been supplied to the impressed CP systems.
2. S&R Two Inc. and Sean Chinna shall complete and submit to the DNR Form 542- 1308, "Notification of Tank Closure or Change-in-Service" within 30-days of the effective date of this Order.
3. 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

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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: 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 annual FR premium for FA would be between \$2,000-\$3,000. Not maintaining FR for four years is an avoided cost of \$8,000.00 to \$12,000.00. Biennial compliance inspection costs are \$850.00 dollars. The last biennial compliance inspection on file was completed in January of 2018.

Additional inspections would have been required in 2020 and 2022 but were not completed. This is an additional avoided cost of \$1,700.00. Assuming USTs at this location cannot be brought back into service, there are no known delayed costs.

Total avoided costs are estimated to be between \$11,300.00 and \$14,700.00 dollars. Even though the economic benefit exceeds the administrative penalty threshold, DNR has determined an administrative order is the appropriate enforcement action.

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 through timely and appropriate detection, as well as prevention and correction of releases of regulated substances from USTs.

This facility’s failure to take necessary and timely actions to maintain compliance with UST regulations presents an elevated risk of harm to the environment, public health and safety and threatens the integrity of a regulatory program. A penalty of \$3,000.00 dollars is recommended.

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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 repeatedly been required to contact this facility and request financial assurance documents and other documentation to verify compliance with UST regulations. This demonstrates the company's complete lack of interest in achieving or maintaining compliance with UST requirements. Neither S&R Two, Inc. nor Mr. Chinna have responded or taken remedial measures to comply with UST regulations.

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.

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