

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

CHERYL & TERRY HONTS

UST # 198609107

ADMINISTRATIVE
ORDER

NO. 2017-UT-00

To: Cheryl & Terry Honts
1749 Douglas Avenue
Nichols, IA 52766

Re: Underground Storage Tanks (UST) at the former Atalissa Mini Mart in
Atalissa, Iowa.

I. SUMMARY

This administrative order (Order) is issued to Cheryl and Terry Honts as owners of the UST system located at the former Atalissa Mini Mart by the Iowa Department of Natural Resources (DNR) due to the Honts' ongoing failure to permanently close the UST system and failure to provide a Tier 2 risk assessment report to the DNR. This Order also addresses the Honts' failure to conduct required compliance inspections of the temporarily closed UST system, failure to pay required tank management fees to the DNR, and failure to maintain required financial assurance for the UST system.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom Collins
Environmental Specialist Senior
Iowa Department of Natural Resources
Wallace State Office Building
502 E. 9th Street
Des Moines, IA 50319
Phone 515-725-8322

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Bureau
Wallace State Office Building
502 E. 9th St.
Des Moines, IA 50319
Phone: 515-725-8239

Make payment payable to:

Director of the Iowa DNR

Send 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]

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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 relevant facts are presented in chronological order:

1. Atalissa Mini Mart (the Site) is located at 127 Highway 6 in Atalissa, Iowa. It is a temporarily-closed retail UST facility owned by Cheryl and Terry Honts. The UST system has been temporarily closed since April 2011.
2. The UST system consists of three 4,000 gallon single-wall steel tanks with impressed current cathodic protection. The impressed current system was found not to be functioning in 2007.
3. Product piping is single-wall steel with safer suction delivery. The UST system was installed in December, 1984.
4. On February 16, 2012, a Notice of Violation (NOV) letter was issued to Cheryl Honts for failure to complete a compliance inspection of the UST system.
5. On September 7, 2012, an NOV was issued to Cheryl Honts for improper temporary closure of the UST system, for failure to maintain financial responsibility for the UST system, for failure to conduct the necessary three year cathodic protection test, and for failure to complete a compliance inspection.
6. On June 12, 2015, an NOV was issued to Cheryl Honts for having no financial assurance for the system, for improper temporary closure, and for unpaid tank management fees. The UST system had been out of service since 2010. Tank management fees had not been paid since 2010. Financial responsibility expired in 2011. In the NOV, DNR explained the availability of tank removal funding from the state.
7. On February 13, 2017, an NOV was issued to Cheryl and Terry Honts for having no financial responsibility, for improper temporary closure, and for unpaid tank management fees. The owners were given ten days to respond to the letter.
8. On February 16, 2007, DNR received confirmation that the NOV was signed for by Mr. Honts. There has been no response.

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9. The Site is also an active Leaking Underground Storage Tank (LUST) site (LUST No. 9LTD01). A petroleum release was confirmed at the Site in February 1996.

10. A revised Tier 2 risk assessment report is currently due, but work at the Site has stalled. Information provided to DNR indicates that the certified groundwater professional (CGP) who was previously working on the Tier 2 assessment would not be able to continue because the company closed its office. Cheryl Honts claimed she had already paid for the Tier 2 to be completed so she refused to have another Tier 2 completed.

11. DNR has instructed Cheryl Honts to work with Seneca Environmental Services on a revised Tier 2 risk analysis.

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. IC § 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. IC § 455B.474(1)"a".

3. The EPC has adopted such rules at 567 IAC chapter 135.

4. As owners of the UST system, Cheryl and Terry Honts are responsible for compliance with DNR's regulations governing the operation, maintenance and closure of the UST system. IC § 455B.471(6); 567 IAC 135.2.

5. 567 IAC 135.3(5) addresses registration tags and annual management fees for UST systems. Fees are required to be paid annually in order to maintain tank registration with the DNR. This requirement applies to temporarily-closed UST systems. The facts stated above establish a violation of this regulatory requirement.

6. 567 IAC 136.4 addresses financial assurance for UST systems. It requires owners of UST systems to provide certain financial assurance for taking corrective action and for compensating victims for damages resulting from accidental releases. The provision applies to temporarily-closed UST systems. The facts stated above establish a violation of this regulatory requirement.

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7. 567 IAC 135.8 enumerates the Risk Based Corrective Action (RBCA) requirements for LUST sites in Iowa, including when a Tier 2 risk assessment is required.

8. 567 IAC 135.15 addresses out of service UST systems and closure. It requires, in relevant part, sites that have been temporarily closed for more than 12 months to permanently close the UST system in accordance with applicable closure regulations. The facts stated above establish a violation of this regulatory requirement.

9. 567 IAC 135.20 addresses UST system compliance inspections. It requires the owner of the UST system to have the system inspected every two years and requires the inspector to submit an inspection report to the DNR. This provision applies to temporarily-closed UST systems. The facts stated above establish a violation of this regulatory requirement.

V. ORDER

THEREFORE, the Director of the DNR orders the following:

1. Cheryl and Terry Honts shall complete permanent closure of the UST system in accordance with 567 IAC chapter 135 within 60 days of this Order being signed by the Director.
2. Cheryl and Terry Honts shall pay all delinquent fees to the DNR within 60 days of this Order being signed by the Director.
3. Cheryl and Terry Honts shall contract with a CGP to complete the revised Tier 2 Risk Assessment report. A final report shall be submitted to DNR within 60 days of this Order being signed by the Director.
4. Cheryl and Terry Honts shall pay an administrative penalty of \$10,000.00 to the DNR within 60 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. The DNR retains its right to pursue additional penalties if Cheryl and Terry Honts do not comply with the requirements of this Order.

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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. These categories are addressed below and the administrative penalty is determined as follows:

- a) Economic Benefit: DNR estimates the economic benefit enjoyed by Cheryl and Terry Honts has been approximately \$18,425.00. This includes the avoided cost of maintaining a financial assurance mechanism since 2012 (\$12,500.00), delinquent tank management fees for 2011-2016 (\$975.00), late fees for delinquent tank management fees (\$3,750.00), and costs for inspections and inspection reports (\$1,200.00).
- b) Gravity of the Violations: The tanks are 30 years old – well beyond their safe operation lifespan. The impressed current cathodic protection has not been in operation since 2011. There are drinking water and non-drinking water wells within 1,000 feet of the UST system that are in jeopardy from these tanks.
- c) Culpability: The owners have consistently ignored DNR correspondence requiring permanent closure. In all correspondence, the owners of the UST system were notified of the requirements for temporary closure and permanent closure of tanks and invited to apply for funding to reimburse expenses of tank removal up to \$15,000.00 per site. The owners have ignored the opportunity and repeatedly failed to comply with applicable DNR regulations.

4. While the DNR has been patient and given Cheryl and Terry Honts multiple opportunities to comply with DNR tank management and closure requirements and to comply with LUST risk assessment regulations, the ongoing compliance failure warrants an administrative penalty of \$10,000.00. Failure to assess a penalty for the violations listed above would threaten the integrity of the regulatory program by not providing a financial incentive for responsible parties to comply with applicable regulations.


VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. Please note that failure to file a timely appeal within 30 days will result in you forfeiting the right to appeal this Order.

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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.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 3rd day of
April, 2017.

CC: Tom Collins; David Scott; V.A, V.E, V.H, V.I.