

IN THE IOWA DISTRICT COURT FOR GUTHRIE COUNTY

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES (99AG23542),)
)
Plaintiff,)
)
vs.)
)
DONALD DEAN WILLIAMS d/b/a)
WILLIAMS OIL COMPANY,)
)
Defendant.)

LAW NO. _____

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources ("DNR") and for its claims against Defendant Donald Dean Williams d/b/a Williams Oil Company ("Williams") states as follows:

Introduction

1. The release of petroleum from underground storage tanks ("USTs") is a substantial public concern because it threatens public health and safety and the natural resources of the state. Williams violated petroleum UST requirements at a site located at 201 West Front Street, Stuart, Iowa, by failing to remove free product, complete a free product assessment report, submit free product recovery reports, install a permanent free product recovery system, and to prepare and submit a corrective action design report. The State of Iowa, therefore, brings this action seeking assessment of a civil penalty and issuance of a permanent injunction against Williams.

Parties

2. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa. *See* Iowa Code § 455A.2 (2005).

3. Williams is a resident of Stuart, Guthrie County, Iowa.

Jurisdiction

4. The DNR is authorized to regulate underground storage tanks (“USTs”) containing regulated substances, including petroleum products, and to adopt rules relating to detection, prevention and correction of releases of regulated substances from such tanks. Iowa Code §§ 455B.471- 479.

5. The Environmental Protection Commission (“EPC”) is authorized to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTs. Iowa Code § 455B.474. The UST rules adopted by the EPC are contained in 567 Iowa Admin. Code chapters 135 and 136.

6. An “owner” of a UST is a person who owns the UST used for the storage, use, or dispensing of petroleum products. *See* Iowa Code § 455B.471(6)(a); 567 Iowa Admin. Code 135.2.

7. An “operator” of a UST is a person in control of, or having responsibility for, the daily operation of the UST. Iowa Code § 455B.471(5); 567 Iowa Admin. Code 135.2.

8. In response to a confirmed petroleum release from the UST system, owners and operators of the UST system must perform the following corrective action measures: (1) remove as much of the petroleum from the UST system as is necessary to prevent further release to the environment; (2) visually inspect any releases and prevent further migration of the petroleum into surrounding soils and groundwater; (3) continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product; (4) remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or

corrective action activities; and (5) investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with DNR rules. 567 Iowa Admin. Code 135.7(3).

9. “Corrective action” means an action taken to reduce, minimize, eliminate, clean up, control or monitor a petroleum release to protect the public health and safety or the environment. 567 Iowa Admin. Code 135.2.

10. “Free product” refers to undissolved petroleum product. 567 Iowa Admin. Code 135.2.

11. At sites containing 0.01 ft. or more of free product, owners and operators of the UST system must immediately initiate a free product recovery assessment, submit to the DNR, within 45 days after confirming a release, a free product recovery assessment report and a proposal for subsequent free product removal activities, and immediately initiate interim free product removal. 567 Iowa Admin. Code 135.7(5).

12. Interim free product recovery reports must be submitted to the DNR on a monthly basis and on forms provided by the DNR. *Id.*

13. Installation of a permanent free product recovery system must commence within 60 days of the DNRs approval of the free product recovery report. 567 Iowa Admin. Code 135.7(5)(e).

14. Free product recovery must continue until its termination is approved by the DNR. 567 Iowa Admin. Code 135.7(5)(f).

15. Any site containing contamination from a UST must be classified by the DNR as either high risk, low risk, or no action required. Iowa Code § 455B.474(1)(d)(2).

16. A Tier 2 site assessment must be conducted and a site cleanup report submitted for all sites which are not classified as “no action required.” 567 Iowa Admin. Code 135.10(1).

17. A site is considered high risk when the DNR determines that contamination from the site presents an unreasonable risk to public health and safety or the environment. Iowa Code § 455B.474(1)(d)(2)(a).

18. A corrective action design report (“CADR”) must be submitted by a certified groundwater professional for all high risk sites within 60 days of the site being classified as high risk upon approval of the Tier 2 site cleanup report. Iowa Code § 455B.474(1)(d)(2)(a); 567 Iowa Admin. Code 135.12(3)(d).

19. The CADR must identify corrective action options designed to reduce contamination at the site to acceptable concentration levels (“target levels”) identified by the DNR. 567 Iowa Admin. Code 135.12(3), 135.12(9).

20. All assessment, corrective action, data analysis and report development must be conducted by or under the supervision of a certified groundwater professional. 567 Iowa Admin. Code 135.8(2).

21. The DNR director is authorized to enforce the requirements of Iowa Code chapter 455B, Division IV, part 8, and rules adopted thereunder, by issuance of an administrative order directing a violator to desist in the practice which constitutes a violation, and to take necessary corrective action to ensure that the violation will cease. Iowa Code § 455B.476(1). The director may also impose appropriate administrative penalties. Iowa Code §§ 455B.109, 455B.476(1).

22. A person who violates a provision of Iowa Code chapter 455B, Division IV, part 8, or rule or order issued thereunder is subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day during which the violation continues. Iowa Code § 455B.477(1).

23. The Attorney General, at the request of the DNR director with approval of the EPC, shall institute any legal proceedings, including an action for injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division IV, part 8, or to obtain compliance with the provisions of said part or the rules or orders issued thereunder. Iowa Code § 455B.477(3).

Facts

24. Williams was the owner and operator of five petroleum USTs located at 201 W. Front Street, Stuart, Iowa (the "Site"). Williams closed and removed the USTs in 1996.

25. Williams had control of, and responsibility for, the daily operation of the USTs.

26. On January 6, 1993, the DNR inspected the Site in response to complaints of gasoline fumes in buildings near the Site and petroleum free product in sewer lines adjacent to the Site. The DNR directed Williams to test samples of soil and groundwater at the Site to determine the extent and concentration of the contamination. Williams failed to comply.

27. On March 7, 1994, the DNR directed Williams to implement a free product recovery system, complete a site cleanup investigation, and submit a site cleanup report to the DNR within 180 days. Williams again failed to comply.

28. On February 13 and 16, 1995, DNR personnel again inspected the Site and discovered a leaking gasoline dispenser, free product in sanitary sewers, and dangerous levels of gasoline fumes in basements of nearby buildings. Williams was again instructed to submit a site cleanup report to the DNR, but failed to do so.

29. On December 13, 1995, the DNR issued Administrative Order No. 95-UT-29 to Williams requiring him to conduct a site cleanup investigation and submit a site cleanup report within ninety days, submit a free product recovery report within forty-five days, continue to conduct an approved free product recovery system, and either submit proof of financial responsibility for the USTs within ten days of receipt of the Order or permanently close the USTs in accordance with DNR rules within ninety days. The Order also assessed an administrative penalty of \$4,800.00. Williams appealed the administrative penalty portion of the Order.

30. On November 1, 1996, DNR officials received an "Initial Site Characterization" Report from Williams indicating extremely high concentrations of free product at the site. On November 5, 1996, DNR officials directed Williams to complete a Tier 2 site assessment within ninety days.

31. On April 10, 1997, Williams signed an Administrative Order Settlement Stipulation amending Administrative Order No. 95-UT-29. The amended order required Williams to submit a Tier 2 site assessment report no later than July 24, 1997, and, if free product is recovered in the future, to conduct a free product recovery investigation and submit a free product recovery report.

32. On August 5, 1997, an Administrative Law Judge (ALJ) entered an Order of Default in Williams' appeal, and required him to complete a Tier 2 assessment within sixty days, and conduct free product recovery in accordance with the terms of Administrative Order No. 95-UT-29, as amended. The Order of Default further ordered Williams to pay the \$4,800.00 administrative penalty within sixty days. Williams did not appeal the Order of Default.

33. Because Williams failed to comply with the Administrative Order, the Attorney General's office initiated an enforcement action in Guthrie County District Court. On February 8,

1999, the Court issued an order granting judgment on default, and ordered Williams to comply with the terms of the Administrative Order, pay the \$4,800 administrative penalty plus interest, and assessed an additional civil penalty of \$5,000. Williams submitted a free product recovery assessment report to the DNR in June 1999, paid a total penalty, plus interest, of \$12,752.00 in July 1999, and submitted a Tier 2 site cleanup report in July 1999.

34. In a July 1, 1999 letter, the DNR informed Williams it rejected his free product recovery assessment report because it was deficient in many respects. The DNR directed Williams to submit a revised report by July 19, 1999. The DNR never received a revised report from Williams.

35. In an August 5, 1999, the DNR informed Williams it rejected his Tier 2 site cleanup report because it was deficient in many respects. Williams was directed to submit a revised report in 90 days. The DNR did not receive a revised report within 90 days.

36. In January 2000, Williams completed an over-excavation to remove contaminated soil from the Site.

37. In a July 10, 2000 letter, the DNR notified Williams he still had not submitted an acceptable free product recovery assessment report or Tier 2 site cleanup report to the DNR. William was given until July 14, 2000 to submit all free product recovery reports, and until July 21, 2000 to submit a revised Tier 2 site cleanup report. Williams submitted a revise Tier 2 report in October 2000.

38. In a November 2, 2000 letter, the DNR notified Williams that upon review of the Tier 2 site cleanup report, the Site was classified as "high risk." The DNR required Williams to submit a corrective action design report (CADR) no later than March 9, 2001. It also directed Williams to

submit all free product recovery reports within 30 days. The DNR received no response from Williams.

39. On October 31, 2001, the DNR sent Williams an overdue notice requiring submittal of the CADR within ten days. The DNR again received no response.

40. On November 22, 2002, the DNR received a letter from Williams' consultant, Seneca, reporting it detected free product in excess of 3.24 feet in thickness at the Site.

41. On December 5, 2002, Seneca reported to the DNR it continued to find the same levels of free product, and it removed about 3.75 gallons of gasoline during its sampling.

42. On May 20, 2004, and August 24, 2004, the DNR issued letters to Williams notifying him of his duty to submit a CADR and perform free product recovery, and proposing terms of a consent order. Williams has not submitted any free product recovery reports or a CADR to the DNR.

Violations

43. Williams failed to submit an acceptable free product recovery assessment report in violation of 567 Iowa Admin. Code 135.7(5), Administrative Order No. 95-UT-29, as amended, Order of Default No. 96DNR-28, and the Court's February 8, 1999 order.

44. Williams failed to conduct free product removal in violation of 567 Iowa Admin. Code 135.7(5), Administrative Order No. 95-UT-29, as amended, Order of Default No. 96DNR-28, and the Court's February 8, 1999 order.

45. Williams failed to submit interim free product recovery reports to the DNR in violation of 567 Iowa Admin. Code 135.7(5), Administrative Order No. 95-UT-29, as amended, Order of Default No. 96DNR-28, and the Court's February 8, 1999 order.

46. Williams failed to implement the installation of a permanent free product recovery system in violation of 567 Iowa Admin. Code 135.7(5)(e), Administrative Order No. 95-UT-29, as amended, Order of Default No. 96DNR-28, and the Court's February 8, 1999 order.

47. Williams failed to prepare and submit a CADR in violation of 567 Iowa Admin. Code 135.12(3)(d) and 135.12(9).

WHEREFORE, Plaintiff State of Iowa ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Williams pursuant to Iowa Code section 455B.477(1) (2005) for each day of violation of 567 Iowa Admin. Code 135.7(5), 135.7(5)(e), 135.12(3)(d), 135.12(9), Administrative Order No. 95-UT-29, as amended, and Order of Default No. 96DNR-28, not to exceed five thousand dollars (\$5,000) for each day of violation; and
- b. issue an order permanently enjoining Williams from any further violation of 567 Iowa Admin. Code 135.7(5), 135.7(5)(e), 135.12(3)(d), 135.12(9), Administrative Order No. 95-UT-29, as amended, Order of Default No. 96DNR-28, and further requiring him to:
 - (1) within 10 days, submit to the DNR the name of the certified groundwater professional retained to complete the free product and corrective action activities required by this order;
 - (2) immediately initiate interim free product removal;
 - (3) within 30 days, submit to the DNR an interim free product recovery report, and submit such a report to the DNR on a monthly basis until otherwise directed by the DNR;
 - (4) within 45 days, submit a revised free product recovery assessment report, and install a permanent free product recovery system;
 - (5) within 60 days, submit to the DNR a corrective action design report ("CADR"); and
 - (6) upon approval of the CADR, immediately begin DNR-approved corrective action and continue corrective action until the DNR issues a no further action certificate for the site.

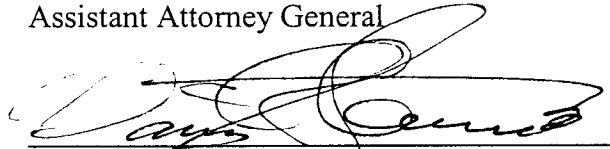
- (6) upon approval of the CADR, immediately begin DNR-approved corrective action and continue corrective action until the DNR issues a no further action certificate for the site.

Plaintiff further requests such other relief the Court may deem just and proper and that the Court tax the costs of this action to the Defendant.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General

A handwritten signature in black ink, appearing to read "David S. Steward", is written over a horizontal line.

DAVID S. STEWARD, PK1024804
Assistant Attorney General
Environmental Law Division
Lucas State Office Building
321 E. 12th, Room 18
Des Moines, Iowa 50319
TEL: (515) 281-5351
FAX: (515) 242-6072
E-MAIL: dstewar@ag.state.ia.us

ATTORNEYS FOR PLAINTIFF