



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



December 15, 2015

BY CERTIFIED MAIL # 7011 1570 0003 6776 0674

James Patnaude
Hampton River Marina
55 Harbor Road
Hampton, NH 03842

**NOTICE OF
INTENT TO RED TAG
IRT #15-042**

**LETTER OF DEFICIENCY
WMD LOD #15-110**

Subject Site/Facility: Hampton – Hampton River Marina, 55 Harbor Road
DES Site #199209019, UST Facility #0110776

Reference: Intent to Red Tag #15-042
Letter of Deficiency WMD LOD #15-110

Dear Mr. Patnaude:

This letter contains important information that affects the continued operation of the subject site/facility. Specifically:

DES will red-tag the non-compliant UST systems if deficiencies #1, #2, #3, #4, #5, #6, #7, #8, and #9 as described below, are not corrected within 10 days of the date of this letter; and

Because the facility is not in compliance with RSA 146-C, you currently are not eligible for reimbursement of cleanup costs incurred should a spill or release occur at your facility.

DES conducts compliance inspections of underground storage tank (UST) facilities to determine the facility's compliance with N.H. RSA 146-C, Underground Storage Facilities, and N.H. Code Admin. Rules Env-Or 400, Underground Storage Tank Facilities (UST Rules). On October 29, 2015, DES staff conducted a compliance inspection of the subject UST facility at the subject site (October Inspection). By inspection report dated October 30, 2015, DES provided you with a list of the deficiencies that were discovered, and informed you that the deficiencies should be corrected within 30 days and verification should be submitted to DES within 45 days.

DES has not received documentation addressing the deficiencies identified in the inspection report. Therefore, pursuant to RSA 146-C:15, DES hereby notifies you of its **intent to red-tag** the non-compliant UST systems if **deficiencies #1, #2, #3, #4, #5, #6, #7, #8, and #9** as listed below are not corrected **within 10 days** of the date of this letter. This letter also serves as a Letter of Deficiency regarding those deficiencies and deficiencies #10 through #18, as listed beginning on page 3.

RSA 146-C:14, Delivery Prohibition, prohibits any person from delivering or causing the delivery of oil to a non-compliant UST that has been red-tagged, and prohibits the owner or operator of a facility from depositing or allowing the deposit of oil into a UST that has a red tag affixed to the tank or facility's fill pipe.

DES Web Site: www.des.nh.gov

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The deficiencies for all tanks are listed below.

Deficiency #1: Failure to conduct annual tightness test for pressurized piping.

During the October Inspection, the DES inspector determined that the annual tightness testing for piping for tank #4 was not conducted. Env-Or 405.11(b) requires owners of pressurized piping without secondary containment and leak monitoring must conduct annual tightness testing for release detection. To correct this deficiency, conduct an annual tightness testing for release detection for piping for tank #4.

Deficiency #2: Failure to submit annual tightness test for pressurized piping.

During the October Inspection, the DES inspector determined that the annual tightness testing for piping for tank #4 was not submitted. Env-Or 405.11(g)(3) requires the owner to submit test results to DES within 30 days of the test. To correct this deficiency, submit the annual tightness testing for release detection for piping for tank #4.

Deficiency #3: Failure to install cathodic protection for piping for tank #4.

During the October Inspection, the DES inspector determined that cathodic protection for piping for tank #4 was not installed. Env-Or 405.12(b) requires the piping system have a negative cathodic potential of at least 850 mV with the cathodic protection applied, measured with respect to a saturated copper/copper sulfate reference electrode contacting the electrolyte; the piping system has a minimum of 100 mV of cathodic polarization; or the requirements specified in NACE SP0285, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection are met. If the cathodic protection system does not meet the requirements of Env-Or 405.12(b), Env-Or 405.12(c) requires the owner to repair or replace the system as specified in Env-Or 405.13; or if the failed cathodic protection system is not repaired within 90 days, permanently close the UST system in accordance with Env-Or 408.06 through Env-Or 408.10. To correct this deficiency, permanently close the UST system in accordance with Env-Or 408.06 through Env-Or 408.10.

Deficiency #4: Failure to test leak monitoring system.

During the October Inspection and based on a subsequent review of DES records, the annual leak monitoring for tank #4 has not been tested since June 16, 2014. Env-Or 406.20 requires owners to test all leak monitoring equipment annually for proper operation. To correct this deficiency, conduct an annual leak monitoring test.

Deficiency #5: Failure to submit leak monitoring system report.

During the October Inspection and based on a subsequent review of DES records, the annual leak monitoring test report for tank #4 has not been submitted since July 8, 2014. Env-Or 406.20 requires owners to submit the leak monitoring test to DES no later than 30 days after the test was performed. To correct this deficiency, submit an annual leak monitoring test.

Deficiency #6: Failure to investigate the cause of the failure and determine is system is leaking.

During the October Inspection and based on a subsequent review of DES records, the leak monitoring system for tank #4 was not continuously performing. On July 8, 2014, DES received a failed annual leak monitoring test for tank #4, confirming the leak monitoring system was not in proper operation per manufacturer's requirements. Env-Or 406.08(a) requires the UST system owner must maintain leak monitoring systems in good working order so they can continuously perform their original design function. Env-Or 406.08(c) requires the owner to

repair the system and clear and reset any alarm condition to normal operating mode within 15 working days, if a leak monitoring system malfunctions. If the system cannot be repaired and the alarm condition cleared and reset to normal operating mode within 15 days, the affected UST system(s) must be temporarily closed until satisfactory repairs are made. To correct this deficiency, submit monitoring replacement or maintenance results, and/or submit an amended UST registration form indicating that the system has been temporarily closed.

Deficiency #7: Failure to provide overfill protection installation.

During the October Inspection, the DES inspector could not verify the overfill protection device for tank #4 was installed at the required 90 percent alert or 95 percent shut off level. Env-Or 405.06 requires the primary overfill protection device on a UST system to alert the transfer operator when the tank is no more than 90 percent full or automatically and completely shut off flow into the tank when the tank is no more than 95 percent full. To correct this deficiency, submit overfill protection installation (including measurements and pictures) at the 90 percent and 95 percent shut off level.

Deficiency #8: Failure to provide overfill protection installation or maintenance results.

During the October Inspection and based on a subsequent review of DES records, overfill protection device for tank #4 was not maintained in good working order. Env-Or 406.06(b)(2) requires spill containment equipment must be maintained in good working order to perform its original design function. Env-Or 405.05(c)(1) requires all spill containment equipment for a UST system must have a liquid capacity of 5 gallons or more. To correct this deficiency, replace, repair or clean to enable the device to collect and hold a minimum 5-gallon spill during product delivery. Submit spill containment maintenance results to DES.

Deficiency #9: Failure to repair cathodic protection for tank #4.

Based on a subsequent file review, DES determined that a failed cathodic protection test was conducted on June 16, 2014 and submitted to DES on July 8, 2014. Env-Or 405.12(c)(2) states that if the failed cathodic protection system is not repaired within 90 days, permanently close the UST system in accordance with Env-Or 408.06 through Env-Or 408.10. To correct this deficiency, permanently close tank #4 in accordance with Env-Or 408.06 through Env-Or 408.10.

As noted above, DES will red-tag the non-compliant UST systems if deficiencies 1, #2, #3, #4, #5, #6, #7, #8, and #9 are not corrected within 10 days of the date of this letter.

In addition to the deficiencies explained above, which form a basis to red-tag the facility, the following deficiencies remain outstanding:

Deficiency #10: Failure to post operator response guidelines.

During the October Inspection, the DES inspector determined that the operator response guidelines were not posted. RSA 146-C:17, III of the UST statute requires an UST operator response guidelines be posted at the facility. Please post the operator response guidelines and submit in writing that the guidelines have been posted.

Deficiency #11: Failure to post UST certificate.

During the October Inspection, the DES inspector determined that an UST certificate was not posted. Env-Or 405.01(g) of the UST Rules requires that a UST certificate be permanently affixed on the facility premises and visible to a DES inspector. Please post the UST certificate on the facility premises and submit in writing that the certificate has been posted.

Deficiency #12: Failure to post a permit to operate.

During the October Inspection, the DES inspector determined that the permit to operate was not posted. Env-Or 404.05-07 of the UST Rules requires a permit to operate and that the permit is permanently affixed on the facility premises and visible to a DES inspector. If you are unable to locate your permit, a replacement permit can be submitted to you upon request. Please post the permit on the facility premises and submit in writing that the permit has been posted. *Please note, per Env-Or 404.06(b), that the permit cannot be issued to the facility until the site is in compliance with Env-Or 400, Env-Or 500, and any applicable requirements of Env-Or 600 or Env-Or 700 relative to corrective action and release response.*

Deficiency #13: Failure to comply with temporary closure requirements.

During the October Inspection, and a subsequent file review the DES inspector determined that tank #5 is temporarily closed. Tank #5 was temporarily closed on November 8, 2007. Env-Or 408.04 requires any portion of a UST system with secondary containment and leak monitoring that has been temporarily closed for two years or more as of September 1, 2013 to be reactivated, allowed to remain in temporary closure provided certain conditions are met, or permanently closed no later than September 1, 2014. Please submit documentation of implementation of whichever option you selected.

Deficiency #14: Failure to lock fill caps of temporarily closed tank(s).

During the October Inspection, the DES inspector determined that tank #5 was temporary closed but fill caps were not locked to prevent filling. Env-Or 408.04(a)(2) requires equipping each opening or access point, such as fill risers, with a lock to secure against unauthorized use or tampering. Please add locks to all fill caps of tanks temporary closed and submit documentation to notify DES locks have been added.

Deficiency #15: Failure to conduct annual stage II inspections.

Based on a subsequent file review, DES determined that annual stage II inspections were not being conducted. Env-Or 505.06(c) requires the owner or operator of a gasoline dispensing facility must conduct annual maintenance inspections of all stage II equipment at the facility as specified in Env-Or 505.09. To correct this deficiency, conduct the annual stage II inspection at the facility.

Deficiency #16: Failure to document annual stage II inspections.

Based on a subsequent file review, DES determined that annual stage II inspections were not being documented. Env-Or 505.09(b) requires the owner or operator to document each annual maintenance inspection, including all findings and repairs made, with written or electronic records kept in accordance with Env-Or 506.04. To correct this deficiency, submit documentation to DES showing the annual stage II inspection has been conducted.

Deficiency #17: Failure to conduct monthly stage II inspections.

Based on a subsequent file review, DES determined that monthly stage II inspections were not being conducted. Env-Or 505.06(b) requires the owner or operator of a gasoline dispensing facility to conduct monthly maintenance inspections of all stage II equipment at the facility as specified in Env-Or 505.08. To correct this deficiency, conduct the monthly stage II inspection at the facility.

Deficiency #18: Failure to document monthly stage II inspections.

Based on a subsequent file review, DES determined that monthly stage II inspections were not being documented. Env-Or 505.08(b) requires the owner or operator to document each monthly maintenance inspection, including all findings and repairs made, with written or electronic records kept in accordance with Env-Or 506.04. To correct this deficiency, submit the most recent monthly stage II inspection to DES.

In addition, because the subject facility is in violation of RSA 146-C, **you currently are not eligible for reimbursement of cleanup costs incurred should a spill or release occur at your facility.**

DES believes you can correct deficiencies #10, #11, #12, #13, #14, #15, #16, #17, and #18 as noted in this letter within **30 days**.

The Commissioner of DES is authorized by RSA 146-C:10-a to impose administrative fines up to \$2,000 per offense for any violation of RSA 146-C or Env-Or 400. DES also has authority to issue an administrative order to require you to correct the deficiencies and to refer the case to the NH Department of Justice for civil or criminal prosecution. In addition, because the subject facility is in violation of RSA 146-C, **you currently are not eligible for reimbursement of cleanup costs incurred should a spill or release occur at your facility.**

Please contact the undersigned in the Waste Management Division of DES as soon as the above deficiencies are corrected, or if you already have corrected them. Please also contact the undersigned if you have any questions regarding this letter.

Sincerely,



Michael W. Juranty, P.E., Supervisor
Oil Compliance Section
Tel No. (603) 271-6058
Fax No. (603) 271-2181
e-mail: Michael.Juranty@des.nh.gov

Attachments: October 30, 2015 UST Facility Inspection Report
Annual Leak Monitoring Test Form
Tank and Piping Tightness Testing Form
UST Registration Form
RSA 146-C:14, 15, & 16: Delivery Prohibition

cc: DES Legal Unit

ec: Hampton Board of Selectmen and Health Officer
DES IRT List



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

10/30/2015

JAMES PATNAUDE
JAMES PATNAUDE
55 HARBOR RD
HAMPTON, NH 03842-

Subject Site: HAMPTON, HAMPTON RIVER MARINA, 55 HARBOR RD
DES Site # 199209019, UST Facility # 0110776

Reference: Underground Storage Tank Facility Inspection Report

On October 29, 2015 the New Hampshire Department of Environmental Services, Waste Management Division (DES) conducted an inspection of the underground storage tank (UST) system(s) at the subject site. The inspection was conducted to determine the level of compliance with key elements of the New Hampshire Code of Administrative Rules Env-Or 400 Underground Storage Facilities (UST Rules) and Env-Or 500, Recovery of Gasoline Vapors. These rules were established for the purpose of reducing the number of product releases to the environment from UST systems and to establish a leak detection system which would alert a facility owner or operator before significant environmental damage and economic loss occurs. The inspection conducted at this facility is part of the DES release prevention effort.

Deficiencies noted during this inspection warrant your facility to be considered in substantial non-compliance with applicable rules. This means they pose a threat of a release to the environment and may result in a release going undetected. The following deficiency(ies) requires your immediate attention:

GENERAL

Env-Or 404.05-07 requires a permit to operate and that the permit is permanently affixed on the facility premises and visible to a DES inspector.

The field inspection revealed that the permit is not posted. If you are unable to locate your permit, a replacement permit can be submitted to you upon request.

Please post the permit on the facility premises and submit in writing that the permit has been posted.

Env-Or 405.01(g) requires that a UST certificate be permanently affixed and visible to the DES inspector at the facility premises and RSA 146-C requires specific UST operator training postings and reporting, and requires significant operational compliance with the release prevention and release detection measures of the statute and Env-Or 400.

The DES inspector could not document that a certificate was posted.

Please post the UST certificate on the facility premises and submit in writing that the certificate has been posted.

Env-Or 405.01(g) requires that a UST certificate be permanently affixed and visible to the DES inspector at the facility premises and RSA 146-C requires specific UST operator training postings and reporting,

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and requires significant operational compliance with the release prevention and release detection measures of the statute and Env-Or 400.

The DES inspector could not document that Facility Response Guidelines meeting the requirements of RSA 146-C:17,III was posted.

Please post the Facility Operator Response Guidelines pursuant to the requirements of RSA 146-C:17,III and notify DES in writing when complete.

TANK #4 (Containing GASOLINE with Capacity of 10000 gallons)

Env-Or 504.05 requires the owner or operator of a gasoline storage tank at a gasoline dispensing facility or bulk gasoline plant subject to Env-Or 504.01 shall perform and document monthly maintenance inspections.

The DES inspector could not document that monthly Stage I inspections are being conducted or that inspection records are being maintained.

Please provide this document to DES.

Env-Or 504.06 requires that the owner or operator of a gasoline storage tank at a gasoline dispensing facility or a bulk gasoline plant subject to Env-Or 504.01 shall perform a yearly maintenance inspection. The DES inspector could not document annual Stage I maintenance inspections are being conducted or that the inspection records are being maintained.

Please provide this document to DES.

Env-Or 405.05 and 406.06 require spill containment devices be installed and maintained in good working order on all UST systems.

Spill containment device was not maintained in good working order.

The spill containment device shall be replaced, repaired or cleaned to enable the device to collect and hold a minimum 5-gallon spill during a product delivery. Please provide spill containment maintenance results.

Env-Or 405.06 requires overfill protection devices be installed and maintained in good working order on all UST systems.

Could not verify that the overfill protection device was installed at the required 90% alert or 95% shut off level.

Please provide overfill protection installation (including measurements and pictures) at the 90% alert and 95% shut off level.

Env-Or 405.08 requires continuous leak monitoring of double wall tank systems and Env-Or 406.20 requires annual leak monitoring system testing for proper operation.

The DES inspector could not verify that the leak monitor for the tank system listed was continuously performing. Any malfunction must be repaired within 15 working days or the affected systems shall be temporarily closed (all product removed to less than 1-inch) until satisfactory repairs are made.

Please provide monitor replacement or maintenance results, and/or indication that the system is temporarily closed.

Env-Or 406.08 requires leak monitoring equipment and devices to be maintained in good working order to continuously perform their original design function and Env-Or 406.20 requires annual testing proper operation.

The DES inspector has determined that the annual monitor test documentation was not available for the tank leak monitoring equipment and devices.

Please provide release detection test results records or close this system.

Env-Or 405.12 requires corrosion protection be installed on regulated piping prior to December 22, 1998. The piping corrosion (cathodic) protection was not installed; therefore, system must be permanently closed.

Please notify DES that tank system is temporarily closed and will be permanently closed.

Env-Or 405.11 and 406.12 requires owners of pressurized piping without secondary containment and leak monitoring to conduct tightness testing. Pipe pressure tightness tests shall have a detection limit equivalent to 0.1 gallon per hour at 1.5 times operating pressure.

The DES inspector has determined that the annual tightness testing was not conducted or submitted.

Please provide tightness test documentation to DES or close this piping system.

TANK #5 (Containing DIESEL FUEL with Capacity of 10000 gallons)

Env-Or 408.04-10 requires that temporary and permanent closure requirements be met for certain UST systems and components.

The DES inspector has determined that a tank was temporary closed but fill caps are not locked to prevent filling.

Please add locks to all fill caps of tanks temporary closed.

Env-Or 408.04-10 requires that temporary and permanent closure requirements be met for certain UST systems and components.

The DES inspector has determined that there is one or more single wall underground storage tank piping system(s) without secondary containment and leak monitoring which has been temporarily closed for more than 12 months at this location.

Please permanently close all single wall piping systems that have been temporarily closed for more than 12 months within 30 days.

Env-Or 408.04-10 requires that temporary and permanent closure requirements be met for certain UST systems and components.

The DES inspector has determined that there is one or more double wall underground storage tank system(s) which have been temporarily closed for more than 36 months at this location that have not been recertified in accordance with Env-Or 408.04(i).

Please permanently close all double wall systems that have been temporarily closed and not recertified for more than 36 months within 30 days.

The above noted **deficiencies must be corrected within 30 days** of the date of this inspection. To verify that the proper corrective measures were taken, documentation, in the form of a report from the certified technician that effected the repair, testing results, invoices, inventory records, photographs, etc., indicating the date and description of the corrective measures taken must be **submitted to DES within 45 days** of the date of this inspection. Please be advised that failure to correct the deficiencies in a proper and timely manner will result in DES proceeding under the DES Compliance Assurance Response Policy to determine an appropriate enforcement response. Please note that New Hampshire RSA 125-C and 146-C authorize permit revocation, administrative fines not to exceed \$2,000 per violation, administrative orders, delivery prohibition, injunctive relief, and civil penalties not to exceed

\$10,000 per violation per day of continuing violation, and \$25,000 for each continued day of a repeat violation.

Your signature below acknowledges that you were briefed by DES staff concerning the noted deficiencies. Should you have any questions concerning the content of this letter, please contact me in the Waste Management Division of DES at (603) 271-3899. DES appreciates your willingness to comply with the UST program in an effort to preserve New Hampshire's environment.

Sincerely,



10/30/2015

SPRUCE WHEELLOCK, Inspector

Date

JAMES PATNAUDE, Facility Manager

Date