



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

Docket Number: 201800002418 BK: 3585 PG: 2705, 2/15/2018 12:38 PM

Recorded in Merrimack County, NH RECORDING \$22.00

MERRIMACK COUNTY RECORDS

Kathi L. Guay, CPO, Register

SURCHARGE \$2.00

Kathi L. Guay, CPO, Register

Douglas Colby, Jr.

P.O. Box 199

Danbury, NH 03230-0199

**ADMINISTRATIVE ORDER
 No. 18-003 WMD**

Re: Dick's Village Store

717 US Route 4, Danbury, NH

UST #0112726 – Site #199607052

January 18, 2018

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Douglas Colby, Jr. under the authority of RSA 146-C:9-a. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division, is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive in Concord, New Hampshire.
2. Douglas Colby, Jr., doing business as *Dick's Village Store*, is an individual having a mailing address of P.O. Box 199, Danbury, NH 03230-0199.

C. STATEMENTS OF FACTS AND LAW

1. RSA 146-C authorizes the New Hampshire Department of Environmental Services ("DES") to regulate the installation, maintenance, operation, licensing and closure of underground storage facilities. The Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Or 400 (previously Env-Wm 1401) to set forth the requirements for underground storage facilities by establishing criteria for registration and permitting and standards for design, installation, operation, maintenance, and monitoring of such facilities (the "UST Rules") in accordance with RSA 146-C:9.
2. Douglas Colby is the recorded owner of real property located at 717 US Route 4 in Danbury, New Hampshire; more particularly identified on Danbury Tax Map 201 as Lot 130 (the "Property").
3. One 3,000-gallon gasoline, double-walled underground storage tank ("UST") with safe suction single-walled piping without leak monitoring ("tank #3B"); and one 9,000-gallon gasoline, double-walled UST with safe suction, single-walled piping without leak monitoring ("tank #3A") were previously constructed on the Property, further identified by DES as UST #0112726 at DES Site #199607052 (the "Facility").
4. The Facility is subject to the requirements of RSA 146-C and the UST rules.

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
 (603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

B
 2271
 2-1

5. RSA 146-C:17, II(a) requires that by August 8, 2012, owners of then-existing facilities shall submit to DES for each UST facility owned in the state a statement signed by both the owner and the designated operators in a format approved by DES identifying the designated class A and B operators, the name of the approved training program by which they are trained, the date that they were certified by the approved training program, and the expiration date regarding their certification.
6. RSA 146-C:17, V, requires that, after August 8, 2012, owners shall revise and resubmit to DES a signed statement that includes the information required by RSA 146-C:17, II, whenever there is a change in designated class A or B operators or a change of approved training programs, or when a designated operator has been retrained as ordered by DES under the authority of RSA 146-C:21, within 30 days of the change for each affected UST facility.
7. RSA 146-C:17, VI, requires that, after August 8, 2012, newly designated class A and B operators shall be trained in accordance with an approved training program within 30 days of being designated. Newly designated class C operators shall be trained in accordance with an approved training program or by a certified class A or B operator before assuming the responsibilities of the class C operator.
8. Env-Or 408.05(c) requires that with “the exception of vent piping, any part of an existing single wall UST system that routinely contains regulated substance without secondary containment and leak monitoring shall be permanently closed by **December 22, 2015.**” (**emphasis added**)
9. Env-Or 408.06(a) requires a UST owner to notify DES at least 30 days prior to any UST system permanent closure.
10. Env-Or 408.10(a) requires a UST owner to submit a closure report to DES within 30 days of the samples being taken.
11. RSA 146-C:15 requires DES to perform an on-site inspection to determine whether a storage tank or facility is non-compliant with DES rules for spill prevention, overfill protection, release detection, leak monitoring, or corrosion protection. Upon determining non-compliant status, DES shall provide written notification to the facility owner and facility operator on the nature of the operational deficiencies, the applicable regulatory requirements, options available for correcting the deficiencies, and the deadline for completion of the work. Upon failure of a facility owner or operator to correct such operational deficiencies to the satisfaction of DES by the established deadline, DES shall issue a written notice of “Intent to Red-Tag” to the facility owner and facility operator, and shall provide notification to all oil delivery companies that have requested to receive such notifications. The notice shall include the deadline after which date DES personnel will red-tag the non-compliant storage tank or facility. Before affixing a red tag to the fill pipe of an underground storage tank or facility, DES shall document the level of stored product in the tank or facility.
12. RSA 146-C:14 prohibits any person to deliver or cause the delivery of oil to a non-compliant storage tank or facility which has been red-tagged. No owner or operator of a facility may deposit or allow the deposit of oil into an underground storage tank or facility that has a red tag affixed to the tank or facility’s fill pipe. No person may deposit oil into an underground storage tank or facility that has a red tag affixed to the fill pipe. No person shall deface, alter, or otherwise tamper with a red tag so that the information contained is not legible.

13. On June 10, 2016, DES issued Notice of Intent to Red Tag No. 16-096 and LOD No. WMD 16-093 to a previous owner of the Property under the authority of RSA 146-C:15. In the Notice/LOD, DES cited the failure to permanently close the single-walled, non-monitoring piping systems, and failure to recertify class A and B operators for the Facility.

14. Env-Or 408.04(a) requires temporary closure of a UST system to be accomplished by: (1) Removing all regulated substances from the system so that no more than one inch of residue remains in the tank; and, (2) Equipping each opening or access point, such as fill risers, with a lock to secure against unauthorized use or tampering.

15. Env-Or 408.04(b) requires that all substances removed from a UST be handled and disposed of in accordance with applicable local, state, and federal requirements.

16. Env-Or 408.04(d) requires that within 30 days of meeting the requirements for temporary closure of a UST system in Env-Or 408.04, the owner shall report the change in operational status by submitting an amended registration form to DES in accordance with Env-Or 404.01.

17. On April 6, 2017, Douglas Colby took ownership of the Property.

18. On April 13, 2017, DES red-tagged the Facility under the authority of RSA 146-C:15, citing the failure to permanently close the single-walled, non-monitoring piping systems.

19. RSA 146-C:3 requires the owner of each existing UST facility to register the facility on forms provided by DES.

20. On May 12, 2017, DES received a Registration for Underground Storage Tank Systems form for the Facility. The registration form, dated April 20, 2017, was signed by Douglas Colby. Mr. Colby listed himself as the Facility Owner on the registration form. Mr. Colby listed the USTs on the Property as "currently in use."

21. To date, DES has not received notice that the single-wall piping without secondary containment and leak monitoring associated with the UST at the Facility has been temporarily, or permanently, closed.

22. On August 7, 2017, DES received a Statement of Training for the Facility. On the form, Mr. Colby designated himself as the class A and B operator for, and the owner of, the Facility.

D. DETERMINATION OF VIOLATIONS

Douglas Colby has violated Env-Or 408.05(c) by operating the Facility, with single-walled, non-monitoring piping systems, after December 22, 2015.

E. ORDER

Based on the above findings, DES hereby orders Douglas Colby, Jr. as follows:

1. **Within 15 days of the date of this Order**, Douglas Colby shall temporarily close the UST systems (tanks #3A and #3B) on the Property in accordance with Env-Or 408.04; **AND**, shall notify DES of his intent to permanently close the single-walled, non-monitoring piping systems on the Property in accordance with Env-Or 408.06(a).

2. **Within 45 days of the date of this Order**, Douglas Colby shall permanently close the single-

walled, non-monitoring piping systems on the Property in accordance with Env-Or 408.06 through Env-Or 408.10.

3. **Within 75 days of the date of this Order**, Douglas Colby shall submit to DES a permanent closure report for the single-walled, non-monitoring piping systems on the Property in accordance with Env-Or 408.10.

4. Douglas Colby shall send **all** correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows: Michael Juranty, P.E., Supervisor, Oil Compliance Section, Oil Remediation and Compliance Bureau, DES Waste Management Division, P.O. Box 95, Concord, NH 03302-0095 ~ Fax: (603) 271-2181 ~ email: Michael.Juranty@des.nh.gov.

F. APPEAL

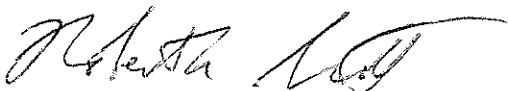
Any person aggrieved by this Order may appeal the Order to the N.H. Waste Management Council ("Council") by filing an appeal that meets the requirements specified in RSA 21-O:14 and the rules adopted by the Council, Env-WMC 200. The appeal must be filed **directly with the Council within 30 days** of the date of this decision and must set forth fully **every ground** upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/waste/index.htm>). Copies of the rules also are available from the DES Public Information Center at (603) 271-2975.

G. OTHER PROVISIONS

Please note that RSA 146-C:10, and RSA 146-C:10-a, provide for administrative fines, and civil penalties, for the violations noted in this Order, as well as for failing to comply with the Order itself. Douglas Colby remains obligated to comply with all applicable requirements, in particular RSA 146-C and the UST Rules. DES will continue to monitor Mr. Colby's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.



Robert R. Scott, Commissioner
Department of Environmental Services

cc: DES Legal Unit

ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Danbury Select Board and Health Officer
Michael Juranty, P.E., Supervisor, Oil Compliance Section, ORCB/WMD/DES
Laura Weit-Marcum, Enforcement Coordinator, ORCB/WMD/DES