

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT

Docket No. 213-2022-CV-00052

State of New Hampshire
Department of Environmental Services

v.

George C. Morse, Sr., d/b/a J & G's Service

**PETITION FOR INJUNCTIVE RELIEF, COST RECOVERY
AND CIVIL PENALTIES**

NOW COMES the State of New Hampshire Department of Environmental Services (“NHDES” or “Department”), by and through its attorneys, the New Hampshire Office of the Attorney General (collectively, the “State”), and complains against George C. Morse, Sr., d/b/a J & G's Service (“Respondent”), as follows:

SUMMARY OF THE CASE

This is an action seeking injunctive relief, strict liability cost recovery and civil penalties for alleged violations of the State's Oil Discharge or Spillage in Surface Water or Groundwater Act (RSA 146-A) and related administrative rules, Underground Storage Facilities Act (RSA 146-C) and related administrative rules, and Hazardous Waste Management Act (RSA 147-A) and related administrative rules.

Respondent owns and operates a currently-inactive gas station (the “Facility”) which repairs and scraps vehicles. The Facility includes an assemblage of tanks, pipes, pumps, vaults,

fixed containers and appurtenant structures, which were used and are designed to be used for the storage, transmission or dispensing of oil or other hazardous substances. In particular the State alleges that Respondent:

- (a) violated RSA 146-A:3 by causing or suffering an oil spill at the Facility and the surrounding natural area, including the Ashuelot River;
- (b) violated RSA 146-A:4, I by failing to undertake immediate measures to minimize the extent of pollution and damage which said discharge would otherwise cause;
- (c) violated RSA 146-A:4, II by failing to immediately undertake to contain or remove the oil spill to the satisfaction of NHDES;
- (d) violated RSA 147-A and Env-Hw 502.01 and 807.06 by failing to identify, label, manage and dispose of hazardous waste at the Facility;
- (e) violated RSA 146-C:9-a by failing to comply with Administrative Order No. 19-002 WMD and failing to rectify the numerous violations of the Underground Storage Facilities Act and related rules which Respondent was alleged to have violated therein; and,
- (f) violated RSA 146-C, and the associated administrative rules by failing to permanently close a non-compliant underground storage tank ("UST"), even after NHDES had "Red-Tagged" said UST, and failing to either bring two other USTs into compliance or permanently close such USTs after NHDES had "Red-Tagged" those tanks as well.

By this action, the State seeks to recover its total costs to date associated with the cleanup of Respondent's oil spill and disposal of Respondent's hazardous waste. The State also seeks civil penalties against Respondent to the maximum amounts allowed by law for violations of RSA 146-A, 146-C and 147-A and the respective administrative rules promulgated thereunder. The State is also seeking injunctive relief directing Respondent to comply in all respects with Administrative Order No. 19-002 WMD, to permanently close the underground storage tank ("UST") systems (tanks #8, #9 and #10) at the Facility and submit a permanent closure report to NHDES in accordance with Env-Or 408.06 through Env-Or 408.10 pursuant to RSA 146-C:9-a.

PARTIES

1. The State of New Hampshire Department of Environmental Services, with principal offices at 29 Hazen Drive in Concord, New Hampshire, 03302-0095, is the State agency responsible for administering and enforcing New Hampshire's environmental laws including the State's Oil Discharge or Spillage in Surface Water or Groundwater Act (RSA 146-A) and related administrative rules, Underground Storage Facilities Act (RSA 146-C) and related administrative rules, and Hazardous Waste Management Act (RSA 147-A) and related administrative rules.

2. The New Hampshire Attorney General has the authority to enforce the State's environmental statutes, and the rules adopted pursuant thereto in the Superior Court pursuant to RSA 21-M:10, II. In addition, RSA 146-C:10, I, authorizes the Attorney General to seek civil penalties for violations of the State's Underground Storage Facilities Act and related rules and RSA 146-C:9-a, II (b) authorizes the Attorney General to seek injunctive relief for violations of the State's Underground Storage Facilities Act and related rules. The State's Oil Discharge or Spillage in Surface Water or Groundwater Act further authorizes the Attorney General to seek recovery of the costs of containing, cleaning up and removing discharged or disposed oil pursuant to RSA 146-A:3-a and 146-A:9, to seek civil penalties for violations of that Act and related rules pursuant to RSA 146-A:14, II-a, and to seek injunctive relief for violations of that Act pursuant to RSA 146-A:9 and 146-A:14, II-a. The State's Hazardous Waste Management Act also authorizes the Attorney General to seek recovery of costs of containment, cleanup or removal of hazardous wastes pursuant to RSA 147-A:9, II and 147-A:14 and to seek civil forfeitures for violations of that Act and related rules pursuant to RSA 147-A:17.

3. Respondent George C. Morse, Sr., is an individual, residing at 30 Rabbit Hollow Road, Winchester, New Hampshire, 03470, having a mailing address of P.O. Box 57, Winchester, New

Hampshire, 03470, and doing business as J & G's Service, at 7 Back Ashuelot Road in Winchester, New Hampshire, 03470; more particularly identified on Winchester Tax Map 05 as Lot 22 (the "Property").

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to RSA 491:7, RSA 498:1, RSA 146-A:9, RSA 146-C: 9-a, II(b), RSA 146-C:10, I and RSA 147-A:14. Since the unlawful activity occurred at the Facility in the Town of Winchester, New Hampshire, venue is proper in the Cheshire County Court.

RELEVANT STATUTES AND RULES

5. RSA 146-C authorizes the Department to regulate the installation, maintenance, operation, licensing and closure of underground storage facilities. Pursuant to RSA 146-C:9, the Commissioner of NHDES has adopted NH CODE ADMIN. RULES Env-Or 400, et. seq. (formerly Env-Wm 1401 et. seq.) 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"). The UST Rules were amended and readopted effective October 10, 2018.

6. RSA 146-C:1, V, defines "Facility" to mean an assemblage of tanks, pipes, pumps vaults, fixed containers and appurtenant structures, singly or in any combination, which are used or designed to be used for the storage, transmission or dispensing of oil or a hazardous substance and which are within the size, capacity and other specifications prescribed by rules adopted by the department pursuant to RSA 146-C:9, VI.

7. RSA 146-C:1, XVIII, defines “Underground Storage Facility” to mean a facility or facility component that is 10 percent or more below the surface of the ground and is not fully visible for inspection.

8. RSA 146-C:1, XII defines “Oil” to mean “oil” as defined in RSA 146-A:2.

9. RSA 146-A:2, III, in turn, defines “Oil” to mean petroleum products and their by-products of any kind, and in any form including, but not limited to, petroleum, fuel, sludge, crude, oil refuse or oil mixed with wastes and all other liquid hydrocarbons regardless of specific gravity and which are used as motor fuel, lubricating oil, or any oil used for heating or processing, but excluding natural gas, liquefied petroleum gas or synthetic natural gas regardless of derivation or source.

10. RSA 146-A:2, I-a defines “Discharge” or “spillage” to mean the release or addition of any oil to land, groundwater or surface water.

11. RSA 146-C:1, XIII, defines “Operator” to mean the person who has responsibility for the care custody and control of the daily operation of a facility.

12. RSA 146-C:1, XIII-a, defines “Class A Operator” to mean the individual or individuals designated by the owner to have primary statutory and regulatory responsibility for the operation and maintenance of the facility. The “Class A Operator” may hold more than one class of operator position.

13. RSA 146-C:1, XIII-b, defines “Class B Operator” to mean the individual or individuals designated by the owner to implement applicable regulatory requirements and implement the daily aspects of the operation, maintenance, and recordkeeping for the facility. The “Class B Operator” may hold more than one class of operator position.

14. RSA 146-C:1, XIV, defines “Owner” to mean the person in possession of or having legal ownership of a facility.

15. RSA 146-C:1, XIV-b, defines “Red-tagged Storage Tank or Facility” to mean one or more oil storage tanks at a facility identified by means of a Department-issued identification tag as being non-compliant with department rules issued under RSA 146-C:9, VI for spill prevention, overfill protection, release detection, leak monitoring, or corrosion protection.

16. RSA 146-C:3 requires the owner of each existing UST facility to register the facility with NHDES on forms provided by the Department.

17. RSA 146-C:9-a, I, states that the Department is authorized to issue an administrative order directing any owner or operator or any other person who is strictly liable to cease any activity violating the Underground Storage Facilities Act, to take action necessary to comply therewith, and to institute corrective and remedial measures.

18. RSA 146-C:9-a, II, (b) and 146-C:10, I, permit the Department to request the Attorney General to bring an action for injunctive relief, including a mandatory injunction.

19. RSA 146-C:10, I provides as follows:

Any person who owns or operates an underground storage facility without a permit as required by this chapter, who fails to comply with a condition of that permit or of an order issued under RSA 146-C:9-a, or who violates any provision of this chapter or the rules adopted under this chapter relative to underground storage facilities shall be subject to a civil penalty of not more than \$10,000 for each violation. Each day of a continuing violation shall count as a separate violation. Such a violation may also be enjoined by the superior court upon application of the attorney general.

20. RSA 146-C:15, requires NHDES to apply the procedures in RSA 146-C:15, I, II, III and IV, in determining whether to red-tag a storage tank or facility.

21. RSA 146-C:15, requires NHDES to apply the procedures in RSA 146-C:15, I, II, III and IV, in determining whether to red-tag a storage tank or facility.

22. RSA 146-C:15, I, requires NHDES to perform an on-site inspection to determine whether a storage tank or facility is non-compliant with NHDES rules for spill prevention, overfill protection, release detection, leak monitoring, or corrosion protection.

23. RSA 146-C:15, II, requires NHDES, in the event that NHDES determines that a storage tank or facility is in non-compliance, to provide written notification to the facility or tank owner and operator on the nature of the operational deficiencies, the applicable regulatory requirements, options available for correcting the deficiencies, and the deadline for completion of any such work.

24. RSA 146-C:15, III, requires NHDES, upon failure of a facility owner or operator to correct such operational deficiencies to the satisfaction of NHDES by the established deadline, to issue a written notice of "Intent to Red-Tag" to the facility owner and facility operator.

25. RSA 146-C:15, III requires NHDES to include in a written notice of Intent to Red Tag a tank or facility the deadline after which date NHDES personnel will red-tag the non-compliant storage tank or facility.

26. RSA 146-C:15, IV, requires NHDES to provide notification of its Intent to Red Tag a tank or facility to all oil delivery companies that have requested to receive notifications of any NHDES issuance of an "Intent to Red-Tag" at storage tank or facility.

27. RSA 146-C:15, III, requires NHDES to document the level of stored product in the tank or facility before "Red-Tagging" the fill pipe of an underground storage tank or facility.

28. RSA 146-C:14, I, prohibits any person from delivering or causing the delivery of oil into, a non-compliant underground storage tank or facility that has a Red Tag affixed to the fill pipe.

29. RSA 146-C:14, II, prohibits an owner of a facility from depositing oil, or allowing the deposit of oil, into an underground storage tank or facility that has a Red Tag affixed to the fill pipe.

30. RSA 146-C:14, III, prohibits any person from depositing oil into an underground storage tank or facility that has a Red Tag affixed to the fill pipe.

31. RSA 146-C:19 requires owners of underground storage facilities to conduct and record monthly visual inspections, meeting certain minimum requirements, conducted by or under the direction of the class A or B operator.

32. Env-Or 405.06(c) mandates that the primary overfill protection device on an underground storage tank ("UST") system must: alert the transfer operator when the tank is no more than ninety percent (90%) full by (1) using a flow restrictor in the UST system fill drop tube that restricts flow into the tank or by triggering a high level visual and audible alarm; or (2) automatically and completely shut off flow into the tank when the tank is no more than ninety-five percent (95%) full.

33. Env-Or 405.08 requires that all tanks installed on or after September 17, 1985 have a leak monitoring system that is continuously operated and that all double-wall tanks installed on or after September 17, 1985 have continuous monitoring of the interstitial space for both the regulated substance being stored and water.

34. Env-Or 406.01(b), formerly Env-Or 406.06(b), requires that on-going spill containment equipment be maintained: (1) free of liquids and debris; (2) in good working order to perform its original design function; and (3) liquid tight.

35. Env-Or 406.02(d)(2), formerly Env-Or 406.08(d)(2), requires that leak monitoring systems be located where the audible alarm and visual indicator can be readily heard and seen by the operator or other personnel during normal working hours.

36. Env-Or 406.09, formerly Env-Or 406.16, requires owners of an UST system to conduct annual tests of automatic line leak detectors in accordance with the manufacturer's requirements to confirm that they are operating in their designed function. The test report must be submitted to NHDES within thirty (30) days after the date of the test and must be recorded on a form obtained from NHDES, which includes information required by Env-Or 406.07(c)(1)-(6), test locations, and test results.

37. Env-Or 406.11, formerly Env-Or 406.18, requires that testing of primary overflow protection systems be conducted and the submission of testing information be completed by December, 22 2017. After this date, primary overflow protection system tests must be conducted on a triennial basis.

38. Env-Or 406.12, formerly Env-Or 406.19, requires that tightness testing for all spill containment equipment without secondary containment and leak monitoring be conducted and the submission of testing information be completed by December 22, 2017. After this date, the tightness testing must be conducted on a triennial basis.

39. Env-Or 406.13, formerly Env-Or 406.20, requires owners of a UST system to test all leak monitoring equipment annually to ensure proper operation. Owners must submit test

information that includes Env-Or 406.14(b) requirements on a form obtained from NHDES or another representative form no later than thirty (30) days after the date of the test.

40. Env-Or 406.17(a), formerly Env-Or 407.24(a), defines a primary containment system as any portion of a UST system that contains a regulated substance or oil, or vapors thereof, that is intended to be in contact with the substance being stored, or its vapors, under normal operating conditions.

41. Env-Or 406.17(b), formerly Env-Or 406.24(b), requires owners of motor fuel dispensing UST systems to use applicable test methods in order to test the primary containment system for tightness no later than December 22, 2017 and triennially thereafter.

42. Pursuant to Env-Or 408.04(a), owners seeking a temporary closure of an UST system must: (1) remove all regulated substances from the system so that no more than one inch of residue remains in the tank; and (2) equip each opening or access point, such as fill risers, with a lock to secure against unauthorized use or tampering.

43. Pursuant to Env-Or 408.04(d), owners seeking a temporary closure of a UST system are required to report the change in operational status by submitting an amended registration form to the department in accordance with Env-Or 404.01 within thirty (30) days of meeting requirements set forth in 408.04(a).

44. Pursuant to Env-Or 505.09, owners must perform the annual maintenance inspections required by Env-Or 505.06(c), as specified in Env-Or 504.06. The owner must document each annual maintenance inspection and include all findings and repairs made in a form acceptable under Env-Or 506.04. During each annual maintenance inspection, the owner must perform all inspections and maintenance specified in Env-Or 505.07, if applicable, and Env-Or 504.06(c).

45. Env-Or 505.10 requires owners of a gasoline dispensing facility to perform stage II system testing as specified in Env-Or 505.11 and Env-Or 505.12 at least once every three (3) years.

46. Per Env-Or 408.04(c), the owner of a temporarily closed system shall comply with the cathodic protection requirements specified in Env-Or 405.12, Env-Or 405.13, and Env-Or 406.10.

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

48. Per Env-Or 408.06(a), the owner shall notify NHDES at least 14 days prior to any UST system permanent closure. Per Env-Or 408.06(b), the closure of any part of a UST system shall be supervised by a certified tank remover.

49. Env-Or 408.07(f)(1), formerly Env-Or 408.07(g)(1), requires that to permanently close a UST system, the owner must remove the UST system unless removing the system would undermine the integrity of any overlying structure or compromise the structural integrity of an adjacent UST system.

50. Env-Or 408.07(h) requires that, for any UST system that is closed in place based on Env-Or 408.07(f)(1), the owner must completely fill each tank with a solid inert material such that no voids remain in the tank.

51. Env-Or 408.07(g), formerly Env-Or 408.07(i), requires that after permanently closing a UST system, the owner must perform an assessment as specified in Env-Or 408.08 to determine whether any contamination is present.

52. Env-Or 408.10 requires the owner of a UST system to submit a closure report to NHDES within 30 days of samples being taken.

53. Env-Or 405.06 sets out the requirements for overfill protection devices for UST systems to prevent the fittings on the top of the tank from being exposed to regulated substances due to overfilling.

54. Env-Or 405.10, formerly Env-Or 405.12, sets out the requirements for a UST to be considered cathode-protected at Env-Or 405.10(b).

55. Per Env-Or 405.10(c), when a cathodic protection system does not meet the requirements of Env-Or 405.10(b), the owner shall repair or replace the system in accordance with Env-Or 405.11; or if the failed cathodic system is not repaired within 90 days, permanently close the UST system in accordance with Env-Or 408.06 through Env-Or 408.10.

56. Per Env-Or 406.12, formerly Env-Or 406.19, no later than December 22, 2017, and triennially thereafter, all spill containment equipment shall be tested for tightness as specified in Env-Or 406.05 through Env-Or 406.08; subject to the exceptions set out in Env-Or 406.12(b), Env-Or 406.12(d), and Env-Or 406.12(e).

57. Env-Or 406.17, formerly Env-Or 406.24, sets out the testing requirements for UST primary containment systems.

58. Per Env-406.17(b), the owner of a motor fuel dispensing UST system shall test the primary containment system for tightness no later than December 22, 2017, and triennially thereafter using specified testing methods.

59. Env-Or 402.06, formerly Env-Or 402.04, defines “cathodic protection system” as the totality of components used to reduce the corrosion of a metal surface by making that surface the cathode of an electrochemical cell, using either a sacrificial anode or impressed current system.

60. Env-Or 406.10, formerly Env-Or 406.17, requires testing of cathodic protection systems within six months of installation and every three years thereafter. Env-Or 406.10(e) states that “when a cathodic protection test is performed, the owner shall send the test report to [NHDES] no later than 30 days after the date of the test.”

61. Env-Or 405.09, and Env-Or 406.02, formerly Env-Or 406.08, require that leak monitoring systems for piping be properly installed, operated, and maintained to continuously monitor to detect water and regulated substances.

62. Owners of UST systems are required by Env-Or 406.13(a) to test all leak monitoring equipment annually for proper operation and required by Env-Or 406.13(d) to submit specific leak monitor testing information to NHDES in writing no later than 30 days after the date of the test.

63. Env-Or 406.01(a)(1), formerly Env-Or 406.06(a), requires owners of USTs to maintain all piping and dispenser containment sumps free of liquid and debris.

64. Env-Or 406.04(e) requires an owner of UST to investigate the cause of any unusual operating condition within 24 hours of becoming aware of the condition; implement measures to prevent or minimize a release, eliminate the leak, or otherwise correct the deficiency; and submit a written report to NHDES within 7 days that describes the investigation and its conclusions.

65. Per Env-Or 406.04(b), unusual operating conditions include, but are not limited to water or regulated substance gain or loss in a tank, sump, or system component that might indicate a problem with system tightness; and a monitoring system indicates that a leak might have occurred.

66. Env-Or 406.09(a) requires that automatic line leak detectors shall be tested annually in accordance with the manufacturer’s requirements to confirm that they are operating in accordance with their designed function.

67. Env-Or 406.09(d) requires that when an automatic line leak detector test is performed, the owner shall send the line leak detector test report to NHDES no later than 30 days after the date of the test.

68. RSA 146-C:19, II(b), requires that monthly visual inspections meeting certain listed minimum requirements shall be conducted at all underground storage facilities under the direction of a class A or B operator and that the results of each inspection shall be recorded in a monthly inspection report and the records shall be maintained and made available for NHDES inspection and copying for a period of not less than 3 years.

69. Per RSA 146-C:19, II, (c)(7) and (d), owners shall inspect each motor fuel dispenser hose for tears, leaks, holes, kinks, crimps, or defects of any kind and replace as necessary, repair or otherwise resolve any such problems within 30 days.

70. An operator of a gasoline dispensing facility is required by Env-Or 504.04(a) and Env-Or 504.05(a) to conduct monthly maintenance inspections of all "Stage I" equipment once in each calendar month, but not sooner than 23 days after and not later than 37 days after the prior monthly inspection.

71. An operator of a gasoline dispensing facility is required by Env-Or 504.05(b) to document each monthly Stage I equipment maintenance inspection, including all findings and repairs made, with written or electronic records kept in accordance with Env-Or 506.04.

72. Operators of gasoline dispensing facilities are required by Env-Or 504.06 to perform and document annual maintenance inspections for Stage I equipment no later than September 30th of each calendar year, and no sooner than 10 months after the prior annual inspection.

73. Env-Or 402.56 defines “Secondary containment” to mean “a release prevention and leak monitoring system for a tank or piping that prevents a regulated substance that has escaped from the primary containment system from reaching the ambient environment.”

74. 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.

75. RSA 146-A:2, I-a defines “discharge” or “spillage” to mean “the release or addition of any oil to land, groundwater or surface water.”

76. RSA 146-A:2, I-c defines “groundwater” to mean “any subsurface water that occurs beneath the water table in soils and geologic formations.”

77. RSA 146-A:2, IX defines “facility” to mean “a location, including structures or land, at which oil is subjected to treatment, storage, processing, refining, pumping, transfer, or collection.”

78. RSA 146-A:3 “Discharge of Oil” states, in part, that the “discharge or spillage of oil into the surface water or groundwater of this state, or in a land area where the oil will ultimately seep into the surface water or groundwater is prohibited....”

79. RSA 146-A:2, VI-a defines “Removal costs” to mean “the costs of containment, removal, cleanup, restoration, and remedial or corrective action or measures that are incurred after a spillage or discharge of oil has occurred or, in any case in which there is a threat of a spillage or discharge of oil, the costs to prevent, minimize or mitigate oil pollution from such an incident.”

80. RSA 146-A:3-a “Strict Liability for Containment, Cleanup and Removal Costs” provides, in part, that:

I. Any person who, without regard to fault, directly or indirectly causes or suffers the discharge of oil into or onto any surface water or groundwater of this state, or in a land area where oil will ultimately seep into any surface water or groundwater of the state in violation of this chapter, or rules adopted under this chapter, shall be strictly liable for costs directly or indirectly resulting from the violation relating to:

(a) Containment of the discharged oil;

(b) Cleanup and restoration of the site and surrounding environment, and correct measures as defined under RSA 146-A:11-a, III(a) and (b); and

(c) Removal of the oil.

81. RSA 146-A:17 states in pertinent part that

Any person who is determined to be strictly liable for discharge or spillage of oil and who willfully fails to comply with a department order requiring investigation, containment, cleanup, removal, remedial measures, or corrective measures, shall be liable to the state in double the amount of cost recoverable funds expended by the state in undertaking investigative, remedial, or corrective action.

82. RSA 146-A:4 "Notification; Removal" states, in part, that:

I. Whenever an oil discharge or spillage occurs which may pollute or which has polluted the surface water or groundwater of this state, the department of environmental services shall be notified immediately and shall assume primary jurisdiction of the cleanup operation. In the interim period before the department of environmental services has had opportunity to assume jurisdiction, the person or persons strictly liable for an oil discharge shall undertake immediate measures to minimize the extent of pollution and damage which said discharge would otherwise cause. Any unexplained oil discharge shall be removed by or under the direction of the department of environmental services.

II. Any person strictly liable for an oil discharge shall immediately undertake to contain or remove such discharge to the department's satisfaction.

83. RSA 146-A:14, II-a provides that:

Any person who discharges or spills oil into or onto the surface water or groundwater of the state or in a land area where the oil will ultimately seep into such waters or any person who violates any provision of this chapter or any rule adopted under the provisions of this chapter shall be subject to a civil penalty not to exceed \$20,000 for each violation. Each day of a continuing violation shall count as a separate violation. Civil penalties for violation of any rule adopted under the provisions of this chapter shall not accrue until the department provides notification of such violation. The attorney general may bring an action for injunctive relief, including a mandatory injunction.

84. RSA 147-A:9, II authorizes the Attorney General to bring an action to recover costs of containment, cleanup, or removal incurred by the Department, the state, or both, and such an action may be brought in connection with an action for injunctive relief or in a separate action in the superior court.

85. RSA 147-A:14, II provides that the Department may request the Attorney General to bring a civil action in superior court for appropriate relief, including a temporary or permanent injunction or both, to enforce any provision of the Hazardous Waste Management Act or any permit, rule, or order issued pursuant to the Hazardous Waste Management Act.

86. RSA 147-A:17, I provides that any person shall be subject to a civil forfeiture of up to fifty thousand dollars (\$50,000.00) for each day of a continuing violation of the State's Hazardous Waste Management Act or related administrative rules.

FACTUAL ALLEGATIONS

A) The Facility

87. The Property includes a "Facility" within the meaning of RSA 146-C:1, V which is subject to the requirements of RSA 146-C and the UST rules, consisting of an assemblage of tanks, pipes, pumps, vaults, fixed containers and appurtenant structures, which singly or in any

combination, are used or designed to be used for the storage, transmission or dispensing of oil or other hazardous substances and which are within the size, capacity and other specifications prescribed by rules adopted by the department pursuant to RSA 146-C:9, VI (the "Facility").

88. The Facility is identified by NHDES as UST #0110712.

89. The Property is identified by NHDES as Site #199411023.

90. The Facility is also a location, including structures and land, at which oil is subjected to storage pumping, transfer and collection and is thus a "facility" within the meaning of RSA 146-A:2, IX.

91. The Facility includes a total of three (3) USTs, respectively identified as Tanks #8, #9 and #10.

92. Tank #8 at the Facility is a 6,000-gallon diesel, double-walled UST without continuous secondary containment or leak monitoring.

93. Tank #9 at the Facility is an 8,000-gallon gasoline, double-walled UST with double-walled pressure piping secondary containment and leak monitoring.

94. Tank #10 at the Facility is 5,000-gallon gasoline, double-walled UST with double-walled pressure piping secondary containment and leak monitoring.

95. Gasoline is stored underground, and was formerly and at times pertinent herein dispensed at, the Facility, which also includes a "Stage I system" as defined by Env-Or 402.59 consisting of equipment installed to recover gasoline vapors displaced from a gasoline storage tank during gasoline delivery and feed the vapors back into the cargo truck.

96. On November 26, 2013, NHDES received a Registration for Underground Storage Tank Systems form for the Facility, required to be provided by the owner of each existing UST

facility by RSA 146-C:3, signed by George C. Morse, Sr. as the Facility Owner on the registration form and dated November 22, 2013.

B) UST Violations Discovered Upon NHDES' August 11, 2015 First Inspection of the Facility

97. On August 11, 2015, NHDES personnel inspected the Facility to determine compliance with RSA 146-C and the UST Rules (the "First Inspection").

98. During the First Inspection of the Facility, NHDES staff observed and contemporaneously documented deficiencies at the Facility in an Inspection Report (the "First Inspection Report") with respect to the cathodic protection system for Tank #8.

99. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that the corrosion protection system for Tank #8 had not been tested within the past three years, in violation of Env-Or 406.10.

100. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that the leak monitoring sensor for Tank #9 was not operating, or not operating properly, in violation of Env-Or 405.09.

101. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that leak monitoring system for Tanks #8, #9, and #10 had not been tested annually, in violation of Env-Or 406.13(a).

102. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented unusual operating conditions in the First Inspection Report insofar as the leak monitors for piping for Tanks #9 and #10 were in alarm condition and there was liquid, or evidence of liquid, accumulating in the sumps of Tanks #9 and #10, in violation of Env-Or 406.01(a)(1).

103. As of the time of NHDES' First inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that Respondent had not implemented measures to prevent or minimize the release of, or otherwise eliminate or correct, the leak of liquid which was accumulating in the sumps of Tanks #9 and #10, in violation of Env-Or 406.04(b).

104. As of the time of NHDES' First Inspection of the Facility, Respondent had not submitted a written report to NHDES describing any investigation undertaken by Respondent of the leak of liquid which was accumulating in the sumps of Tanks #9 and #10, in violation of Env-Or 406.04(e).

105. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that the automatic line leak detector for tanks #9 and #10 had not been tested in the past year, in violation of Env-Or 406.09(a).

106. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that the monthly visual inspections were not being properly conducted, in violation of RSA 146-C:19, II(b),

107. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that the breakaway on the dispensing hose for dispenser #5-6 (diesel) was not being properly operated or maintained, or was not installed, in violation of RSA 146-C:19, II(c)(7) and (d).

108. At the close of the First Inspection, a NHDES inspector provided a copy of the First Inspection Report to George C. Morse, Sr.

109. Mr. Morse signed the First Inspection Report, acknowledging receipt thereof.

110. The First Inspection Report noted the deficiencies and the corrective actions required to achieve compliance.

111. In the first Inspection Report, NHDES requested that Respondent take the necessary corrective actions within 30 days of the First Inspection, and that document such corrective actions to NHDES within 45 days of the First Inspection.

112. Respondent never documented taking any of the corrective actions identified in the First Inspection Report to NHDES within 45 days of the First Inspection or at any time thereafter.

113. Upon information and belief, Respondent at no time undertook any of the corrective actions identified in the First Inspection Report.

C) Violations of Gasoline Vapor Recovery Rules Discovered Upon NHDES August 11, 2015 First Inspection of the Facility

114. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that at least two monthly inspections of Stage I vapor recovery equipment associated with Tanks #9 and #10 had not been conducted during the calendar year, in violation of Env-Or 504.04(a) and Env-Or 504.05(a).

115. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that monthly Stage I equipment maintenance and inspection records for Tanks #9 and #10 were not being documented and maintained, in violation of Env-Or 504.05(b).

116. During the First Inspection of the Facility, NHDES personnel observed and contemporaneously documented in the First Inspection Report that annual Stage I equipment maintenance and inspection records for Tanks #9 and #10 were not being documented and maintained, in violation of Env-Or 504.06(c).

D) NHDES' Red-Tagging of Tank #8 and Letters of Deficiency for the Facility

117. On October 8, 2015, NHDES issued Notice of Intent to Red Tag No. 15-022 (the “First Red Tag Notice”), and Letter of Deficiency (“LOD”) No. WMD 15-082, to George C. Morse, Sr. under the authority of RSA 146-C:15.

118. In the Red Tag Notice/LOD, NHDES cited Respondents’ failure to comply with cathodic protection, leak monitoring, leak detection, and Stage I system requirements as enumerated in the First Inspection Report.

119. On October 27, 2015, NHDES received notification from Respondent of Stage I annual pressure decay testing at the Facility scheduled for 11 a.m. on October 29, 2015, which did not provide NHDES with the 7-day notice required by Env-Or 504.07(b).

120. On October 30, 2015, NHDES received from Respondent a passing annual line leak detector testing results for Tanks #9 and #10 conducted at the Facility on October 29, 2015.

121. NHDES has no record of receiving notice, on or before December 22, 2015, that Tank #8 at the Facility, a UST without continuous secondary containment or leak monitoring, had been placed in temporary or permanent closure, in violation of Env-Or 408.05(c).

122. On June 10, 2016, NHDES issued Notice of Intent to Red Tag No. 16-092 (the “Second Red Tag Notice”), and LOD No. WMD 16-090, to Respondent under the authority of RSA 146-C:15. In the Notice/LOD, NHDES cited among other conditions at the Facility his failure to permanently close the non-monitored piping system for Tank #8.

123. On August 8, 2017, NHDES Red-Tagged Tanks #8, #9, and #10 at the Facility under the authority of RSA 146-C:15, citing failure to comply with cathodic protection, leak monitoring, leak detection, and failure to permanently close the non-monitored piping system for Tank #8.

124. On August 11, 2017, NHDES received passing results for annual line leak detector and annual leak monitoring tests conducted on Tanks #9 and #10 at the Facility on August 10, 2017.

125. On August 24, 2017, NHDES was notified by a contractor for Mr. Morse that the water in the sumps was surface water, and that the contractor had installed gaskets on the sumps for Tanks #9 and #10 to prevent further surface water intrusion.

126. On August 24, 2017, NHDES removed the red tags from Tanks #9 and #10 at the Facility, because Respondent had corrected violations of the UST Rules for leak monitoring and leak detection for those USTs.

127. On October 19, 2017, NHDES issued LOD No. WMD 17-219 to Respondent, citing his failure to: (a) comply with monthly and annual Stage I inspection and recordkeeping requirements for Tanks #9 and #10; (b) replace the hose with proper breakaway at dispenser #5-6; (c) submit an amended UST registration form placing Tank #8 in temporary closure; (d) maintain cathodic protection requirements, and; (e) maintain the Facility in significant operational compliance with release prevention and release detection requirements, other requirements of RSA 146-C, and the UST Rules.

128. In LOD #WMD 17-219, NHDES requested that the deficiencies at the Facility be corrected within 30 days.

129. NHDES did not receive a response to LOD #WMD 17-219 within the timeframe specified therein or at any time thereafter.

130. To date, NHDES has not received the required notice that Tank #8 at the Facility has been temporarily or permanently closed as directed by LOD #WMD 17-219, in violation of Env-Or 408.04(d).

E) NHDES' August 31, 2018 Second Inspection of the Facility and UST Violations Discovered

131. On August 31, 2018, NHDES personnel inspected the Facility to determine compliance with RSA 146-C and the UST Rules (the "Second Inspection").

132. During the Second Inspection of the Facility, NHDES staff observed and contemporaneously documented in the Second Inspection Report that required documentation showing annual testing of leak monitoring equipment and devices was not available for Tanks #8, #9, and #10, in violation of Env-Or 406.20, now Env-Or 406.13.

133. During the Second Inspection of the Facility, NHDES staff observed and contemporaneously documented in the Second Inspection Report that required testing of spill containment integrity for Tanks #8, #9, and #10 had not been conducted, in violation of Env-Or 406.19, now Env-Or 406.12.

134. During the Second Inspection of the Facility, NHDES staff observed and contemporaneously documented in the Second Inspection Report that required testing of primary containment tightness for Tanks #8, #9, and #10 had not been conducted, in violation of Env-Or 406.24(b), now Env-Or 406.17(b).

135. During the Second Inspection of the Facility, NHDES staff observed and contemporaneously documented in the Second Inspection Report that an electrical conduit or work boxes in the sumps of Tanks #9 and #10 were severely corroded and/or damaged, in violation of Env-Or 405.09, and Env-Or 406.08, now Env-Or 406.02.

136. During the Second Inspection of the Facility, NHDES staff observed and contemporaneously documented in the Second Inspection Report that required documentation showing annual testing of piping leak monitoring equipment and devices for Tanks #9 and #10 was not available, in violation of Env-Or 406.20, now Env-Or 406.13.

137. At the close of the Second Inspection, a NHDES inspector provided a copy of the Second Inspection Report to George C. Morse, Sr.

138. Mr. Morse signed the Second Inspection Report, acknowledging receipt thereof.

139. In the Second Inspection Report, the NHDES inspector noted the deficiencies and the corrective actions required to achieve compliance.

140. In the Second Inspection Report, NHDES requested that the corrective actions be taken within 30 days of the Second Inspection and documented to NHDES within 45 days of the Second Inspection.

141. On September 10, 2018, NHDES received passing testing results for the line leak detectors serving Tanks #9 and #10 from Respondent.

142. Other than conducting the line leak detector testing which Respondent reported to NHDES on September 10, 2018, Respondent did not otherwise undertake any of the corrective actions identified in the Second Inspection Report.

F) NHDES' Notice of Intent to Red Tag Tanks #8, #9 and #10

143. On December 18, 2018, NHDES issued Notice of Intent to Red Tag No. 18-036 to George C. Morse, Sr., under the authority of RSA 146-C:15.

144. In the December 18, 2018 Notice of Intent to Red Tag No. 18-036, NHDES cited the failure to correct eleven (11) specific deficiencies observed at the Facility and previously described prior Red Tag Notices, LODs, and/or the First and/or Second inspection reports.

145. In the December 18, 2018 Notice of Intent to Red Tag No. 18-036, NHDES advised Respondent that if the numerous previously identified deficiencies were not corrected within ten (10) days, NHDES would red-tag all three of the USTs at the Facility, prohibiting delivery of oil or gas to the USTs.

146. NHDES did not receive a response to its December 18, 2018 Notice of Intent to Red Tag #18-036 from George Morse within (ten) 10 days of the date of the notice or at any time thereafter.

147. NHDES staff telephoned Mr. Morse on December 28, 2018, to inquire about the status of compliance with RSA 146-C and the UST Rules at the Facility, at which time Mr. Morse claimed that he did not receive the December 18, 2018 Notice of Intent to Red Tag #18-036.

148. In their telephone conversation with Mr. Morse of December 28, 2018, NHDES staff offered to send the December 18, 2018 Notice of Intent to Red Tag #18-036 to Mr. Morse by email or fax, but Mr. Morse responded that he had neither a fax machine nor email address.

149. In their telephone conversation with Mr. Morse of December 28, 2018, NHDES staff suggested that Mr. Morse could pick up the original notice sent by certified mail at his local U.S. post office and Mr. Morse responded that he had not been to the post office in a while.

150. In their telephone conversation with Mr. Morse of December 28, 2018, NHDES staff offered to re-send the December 18, 2018 Notice of Intent to Red Tag #18-036 via regular mail.

151. On or after December 28, 2018, NHDES staff placed a copy of the December 18, 2018 Notice of Intent to Red Tag #18-036 notice in the regular mail to Mr. Morse.

152. NHDES staff offered that once Mr. Morse received the December 18, 2018 Notice of Intent to Red Tag #18-036, he could call NHDES to discuss any questions he may have about achieving compliance with RSA 146-C and the UST Rules at the Facility.

153. NHDES staff contacted Mr. Morse on January 4, 2019, regarding the outstanding deficiencies at the Facility and Mr. Morse requested additional time to achieve compliance.

154. On January 11, 2019, NHDES staff telephoned Mr. Morse and offered to fund the closing of all three USTs at the Facility, including all aspects of UST removal, soil and groundwater testing, reporting, and site restoration through the MtBE Remediation Fund.

155. Mr. Morse's never accepted the Department's offer to fund the closing of all three USTs at the Facility through the MtBE Remediation Fund.

156. NHDES staff telephoned Mr. Morse on January 18, 2019, to inquire about the status of compliance with RSA 146-C and the UST Rules at the Facility and Mr. Morse stated that he had discussed testing with a tank testing firm, but had not scheduled testing.

157. During the January 18, 2019 telephone discussion with NHDES staff, Mr. Morse asserted that he had ordered new whips and hoses, but had not received the new equipment, and suggested that he would like to wait until the spring to take the corrective actions needed to achieve compliance.

158. On February 1, 2019, NHDES Red-Tagged Tanks #9 and #10 at the Facility under the authority of RSA 146-C:15.

159. On February 1, 2019, NHDES staff confirmed that Tank #8 at the Facility has remained Red-Tagged since August 8, 2017.

160. Mr. Morse's refusal to accept State-funded closure of the USTs at the Facility through the MtBE Remediation Fund led to the issuance of NHDES Administrative Order No. 19-002 on February 13, 2019 which mandated closure of such USTs.

G) NHDES's Issuance of Administrative Order No. 19-002 WMD dated February 13, 2019

161. On February 13, 2019, NHDES telephoned Respondent to apprise him that an Administrative Order was about to be issued against him for the violations at the Facility.

162. On February 13, 2019, NHDES issued Administrative Order No. 19-002 WMD (the “NHDES Order”), a true and complete copy of which is annexed as **Exhibit A** hereto and made part hereof, to Respondent.

163. The NHDES Order found that Respondent had violated RSA 146-C:19, II, by failing to conduct and record monthly visual inspections of the Facility meeting certain minimum requirements under the direction of the class A or B operator for the Facility; and by failing to repair or otherwise resolve deficiencies which NHDES had discovered at the Facility. *Id.* at 9.

164. The NHDES Order further found that Respondent had violated Env-Or 405.09, and Env-Or 406.08 (now Env-Or 406.02), by failing to repair or replace severely corroded or damaged electrical conduit or work boxes in the sumps for Tanks #9 and #10 at the Facility. *Id.*

165. The NHDES Order further found that Respondent had violated Env-Or 406.16 (now Env-Or 406.09), by failing to conduct annual testing of the automatic line leak detectors at the Facility. *Id.* at 10.

166. The NHDES Order further found that Respondent had violated Env-Or 406.19 (now Env-Or 406.12) by failing to test the spill containment integrity of the USTs at the Facility. *Id.*

167. The NHDES Order further found that Respondent had violated Env-Or 406.20 (now Env-Or 406.13), by failing to make available to NHDES documentation showing annual testing of all leak monitoring equipment and devices during the inspection of the Facility on August 31, 2018. *Id.*

168. The NHDES Order further found that Respondent had violated Env-Or 406.24(b) (now Env-Or 406.17(b)), by failing to test the primary containment tightness of the USTs at the Facility. *Id.*

169. The NHDES Order further found that Respondent had violated Env-Or 408.05(c) by failing to permanently close Tank #8 on the Property by December 22, 2015. *Id.*

170. The NHDES Order further found that Respondent had violated Env-Or 504.04(a), and Env-Or 504.05, by failing to conduct and document monthly maintenance inspections of all Stage I equipment at the Facility. *Id.*

171. The NHDES Order further found that Respondent had violated Env-Or 504.04(b), and Env-Or 504.06, by failing to conduct and document annual maintenance inspections of all Stage I equipment at the Facility. *Id.*

172. The NHDES Order directed Respondent, within 15 days of the date thereof, to temporarily close Tank #8 at the Facility in accordance with Env-Or 408.04 and to notify NHDES of his intent to permanently close Tank #8 and its associated piping in accordance with Env-Or 408.06(a). *Id.*

173. The NHDES Order further directed Respondent, within 30 days of the date thereof, to: (a) conduct and document monthly and annual Stage I system maintenance inspections of the Facility as required by Env-Or 504.04; (b) conduct and document monthly visual inspections in accordance with RSA 146-C:19, II; (c) conduct tightness testing on the primary containment system at the Facility; (d) conduct testing of spill containment integrity at the Facility, and; (e) repair or replace damaged or corroded electrical conduit or work boxes in the sumps of Tanks #9 and #10 at the Facility. *Id.*

174. The NHDES Order further directed Respondent, within 45 days of the date thereof, to submit to NHDES all required documentation showing all testing, repairs, and replacement required to bring the Facility into compliance with RSA 146-C and the UST Rules and to

permanently close Tank #8, and its associated piping at the Facility in accordance with Env-Or 408.06 through Env-Or 408.10. *Id.*

175. The NHDES Order further directed Respondent, within 75 days of the date thereof, to submit to NHDES a permanent closure report for Tank #8, and its associated piping, in accordance with Env-Or 408.10. *Id.* at 11.

176. NHDES has no record of Respondent's compliance with any aspect with the NHDES Order.

177. Upon information and belief, Respondent failed to comply with the NHDES Order in any respect.

178. The NHDES Order advised Respondent that said Order could be appealed to the New Hampshire Waste Management Council ("Council") within thirty (30) days of the date thereof. *Id.*

179. The Respondent did not appeal the NHDES Order.

180. The NHDES Order is, therefore, *res judicata*.

H) Violations of the UST Laws and Rules Subsequent to NHDES' Administrative Order

181. On July 17, 2019, NHDES issued a letter notifying Respondent that Env-Or 408.05(f), effective October 10, 2018, requires UST systems that have been red-tagged to be brought into compliance or permanently closed within one year of the date the red tag was placed, and requested that Respondent comply by October 10, 2019.

182. NHDES has no record of Respondent's compliance with Env-Or 408.05(f).

183. Upon information and belief, the Respondent did not comply with Env-Or 408.05(f).

184. At all times pertinent herein prior to July 17, 2020, an individual named Richard Rounds served as the "Class A and B" Operator for the Facility.

185. On July 17, 2020, NHDES received a call from Richard Rounds asking NHDES to remove him as the class A and B operator of the Facility.

186. Mr. Rounds' resignation as the Facility's Class A and B Operator left the Facility without the Class A and B Operator to conduct or direct monthly visual inspections at the Facility, in violation of RSA 146-C:19, II(a).

I) Violations Relating to the Discharge of Oil and Improper Storage of Hazardous Wastes

187. On July 19, 2021, NHDES received a telephone notification from the Town of Winchester, New Hampshire to report that severe flooding of the Ashuelot River had resulted in multiple releases of oil and/or hazardous materials (OHM) at the Facility.

188. On July 19-20, 22, and 26, 2021, NHDES conducted site visits to the Facility to determine the extent and impact of the OHM spillage and to assess compliance with Oil Discharge or Spillage laws and rules and Contaminated Site Management/Hazardous Waste Management Law and Rules.

189. Based on NHDES' July 26, 2021 site visit to the Facility, the Department determined that an unknown quantity of OHM, more specifically a combination of motor oil, waste oil, and automotive fuels such as gasoline and/or diesel fuel was spilled at the Facility and impacted the surface water of the Ashuelot River on or about July 18, 2021.

190. Flooding of the Ashuelot River on or about July 18, 2021 caused twelve (12) 55-gallon drums of OHM located at the Facility to overturn and discharge their contents directly to the floodwaters of the Ashuelot River in violation of RSA 146-A:3.

191. As of July 26, 2021, fifteen (15) additional 55-gallon badly rusted, dented and/or bulging steel drums of unknown contents which Respondent identified as containing a mixture of

waste gasoline and/or used oil, constituting hazardous waste, were stored on the bare ground at the rear of the Facility.

192. At the close of the July 26, 2021 site visit to the Facility, NHDES issued a Notice of Strict Liability and a Notice of Initial Complaint Investigation to Respondent, requesting that he address the concerns stated therein by September 26, 2021.

193. NHDES' July 26, 2021 Notice of Initial Complaint Investigation requested that the Respondent, among other things, contain and/or remove the oil which had been discharged into the surface water, groundwater or onto the land on or before September 26, 2021 pursuant to RSA 146-A:3 and A:4, II.

194. Respondent failed to contain and/or remove the oil which had been discharged into the surface water, groundwater or onto the land to the satisfaction of the Department by September 26, 2021, in violation of RSA 146-A:4, II.

195. NHDES' July 26, 2021 Notice of Initial Complaint Investigation also requested that the Respondent, among other things, properly seal and label all containers of hazardous waste at the Facility on or before September 26, 2021 pursuant to Env-Hw 507.01(a)(1) and (3), and Env-Hw 807.06(b)(4) and (5).

196. NHDES' July 26, 2021 Notice of Initial Complaint Investigation also requested that the Respondent, among other things, remove containers of oil and hazardous waste from the Facility and dispose of the same at a permitted waste disposal facility on or before September 26, 2021 pursuant to RSA 149-M:9 and RSA 147-A.

197. NHDES' July 26, 2021 Notice of Initial Complaint Investigation also requested that the Respondent, among other things, conduct a hazardous waste determination on or before

September 26, 2021 pursuant to Env-Hw 401.04, Env-Hw-403 and Env-Hw-502.10 to identify the contents of the abandoned 55-gallon drums located at the rear of the Facility.

198. Respondent failed to conduct a hazardous waste determination by September 26, 2021, or at any time thereafter, pursuant to Env-Hw 401.04, Env-Hw-403 and Env-Hw-502.10 to identify the contents of the abandoned 55-gallon drums located at the rear of the Facility.

199. Respondent failed to properly seal and label all containers of hazardous waste at the Facility on or before September 26, 2021 in violation of Env-Hw 507.01(a)(1) and (3) and Env-Hw 807.06(b)(4) and (5) and RSA 146-A:4, II.

200. Respondent failed to remove containers of oil and hazardous waste from the Facility and dispose of the same at a permitted waste disposal facility on or before September 26, 2021 in violation of RSA 146-A:4, II and Env-Hw 502.01 and 807.06.

201. On September 2, 2021, NHDES issued Letter of Deficiency LOD WMD #21-037 to Respondent alleging that Respondent had: (a) violated RSA 146-A:3 by spilling oil into the surface water of this state and within the basement of the automotive shop where the oil could ultimately seep into surface water or groundwater; (b) violated RSA 147-A and Env-Hw 507 and 807.06 by failing to properly manage, store and label the 55-gallon drums of used oil and/or waste gasoline at the facility, and; (c) violated Env-Or 604.06 by failing to immediately notify NHDES that a release/discharge of OHM had occurred at the Facility.

202. NHDES' September 2, 2021 Letter of Deficiency LOD WMD #21-037 requested that Respondent, within fifteen (15) days of the date thereof, conduct an Initial Response Action (IRA) in accordance with RSA 146-A:4-I and Env-Wm 605.04 by hiring an environmental contractor to collect and properly contain spilled oil and/or gasoline for subsequent disposal at an approved facility.

203. NHDES' September 2, 2021 Letter of Deficiency LOD WMD #21-037 also requested that Respondent, within fifteen (15) days of the date thereof, identify the contents of the abandoned drums in the back lot of the facility and conduct hazardous waste determinations on all waste containers located at the facility as required by Env-Hw 502.01, manage the containers of hazardous waste according to the applicable requirements of Env-Hw 500 and dispose of the containers of hazardous waste at an approved facility.

204. On October 5, 2021, NHDES performed a follow-up site inspection to determine the level of progress Respondent had made in complying with NHDES' September 2, 2021 Letter of Deficiency LOD WMD #21-037.

205. When no one answered the door(s) at the Facility on October 5, 2021, NHDES staff walked around to the back lot of the property where drums of waste gasoline were located during the July 26, 2021 site inspection and observed that no visible effort had been undertaken to address compliance issues associated with the drums, twenty-eight (28) of which were visible.

206. Respondent failed to undertake immediate measures to minimize the extent of pollution and damage which the discharge of oil would otherwise cause, in violation of RSA 146-A:4, I.

207. Respondent failed to immediately or otherwise undertake to contain or remove the discharge of oil at the Property in violation of RSA 146-A:4, II.

208. NHDES staff then met with Respondent at his residence at 30 Rabbit Hollow Road in Winchester, New Hampshire, and explained to him that the drums of waste gasoline and waste oil remained out of compliance with hazardous waste rules, and represented a hazard to human health and the environment and that NHDES had consequently contacted a contractor to remove

the waste oil and waste gasoline from the Facility, the cost of which would be the responsibility of Respondent.

209. Respondent acknowledged to NHDES staff at that time that he understood that a contractor would be removing the waste petroleum products from the Facility and that Respondent would be responsible for the cost thereof.

210. On October 21, 2021, NHDES staff conducted another site visit to the Facility to oversee and assist with the removal of drums and waste oil from the property, which was undertaken by Clean Harbors Environmental ("Clean Harbors") as contractor to NHDES.

211. Clean Harbors removed a total of fifty-four (54) 55-gallon drums and four (4) 5-gallon pails of motor oils and other fluids from the Facility and performed other various cleanup tasks on October 21, 2021 at a cost of \$9,080.30.

212. NHDES staff time for several site visits between July and October of 2021 in response to the July 2021 oil discharge amounted to \$2,277.35.

213. As the October 21, 2021 Site Investigation Summary Report recounts, NHDES staff met with Respondent on October 21, 2021 after Clean Harbors completed its removal activities at the Property and advised Respondent that additional work, including pumping out the USTs at the Facility and removing one remaining drum in the rear of the Facility was still required to complete removal actions at the Property.

214. Additional cleanup and removal actions and corrective measures will be required at the Property including cleanup to address the oil discharges which occurred in the basement of the building on site and an environmental investigation (including installing monitoring wells, soil and water sampling, response actions to address identified and impacts and reporting and site management).

COUNT I: PERMANENT INJUNCTIVE RELIEF
REQUIRING COMPLIANCE WITH THE NHDES ORDER
PURSUANT TO RSA 146-C:9-1, II(b)

215. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

216. Administrative Order No. 19-002 WMD issued on February 13, 2019 in pertinent part directed Respondent, within 45 days of the date thereof, to: bring Tank #9 and Tank #10 into compliance with RSA 146-C and the UST Rules and to permanently close Tank #8, and its associated piping, at the Facility in accordance with Env-Or 408.06 through Env-Or 408.10. *Id.*

217. The NHDES Order further directed Respondent, within 75 days of the date thereof, to submit to NHDES a permanent closure report for Tank #8, and its associated piping, in accordance with Env-Or 408.10. *Id.* at 11.

218. To date, Respondent has failed to bring Tank #9 and Tank #10 into compliance with RSA 146-C and the UST Rules as required by Administrative Order No. 19-002 WMD.

219. To date, Respondent has failed to permanently close Tank #8, and its associated piping, at the Facility in accordance with Env-Or 408.06 through Env-Or 408.10, as required by Administrative Order No. 19-002 WMD.

220. The storage of oil and hazardous substances at the Facility presents an ongoing, imminent and substantial threat to human health and the environment.

221. Pursuant to RSA 146-C:9-a, II (b), the State is seeking a permanent injunction requiring the Respondent to comply with the NHDES Order and directing Respondent to permanently close the UST systems (tanks #8, #9 and #10) on the Property and submit a permanent closure report in accordance with Env-Or 408.06 through Env-Or 408.10.

COUNT II: COST RECOVERY FOR RESPONSE AND REMOVAL COSTS

TO ADDRESS THE DISCHARGE OF OIL PURSUANT TO RSA 146-A:9

222. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

223. Respondent is a person who has directly or indirectly caused or suffered the discharge of oil into the surface waters of the State and into and onto land areas where oil will ultimately seep into surface water or groundwater as described in RSA 146-A:3-a, I.

224. The State has incurred and will incur costs resulting from discharge of such oil into the surface waters of the State and into and onto land areas where oil will ultimately seep into surface water or groundwater.

225. Respondent is strictly liable to the State for all costs directly or indirectly resulting from such discharge in the amount of twelve thousand, four hundred and forty-four dollars (\$12,444.00).

226. Such costs are inclusive and not duplicative of costs for the removal of hazardous wastes addressed in Count III, *infra*.

COUNT III: COST RECOVERY FOR RESPONSE AND REMOVAL COSTS TO ADDRESS VIOLATIONS OF HAZARDOUS WASTE MANAGEMENT RULES PURSUANT TO RSA 147-A:17, III

227. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

228. Respondent violated Env-Hw 502.01 and 807.06 by failing to identify, label, manage and dispose of containers of hazardous waste at the Property.

229. Respondent is a person who, without regard to fault, has directly or indirectly caused or suffered violations of RSA 147-A:17 insofar as Respondent violated Env-Hw 502.01 and 807.06.

230. The State has incurred and will incur costs resulting from Respondent's violation of RSA Ch. 147-A and rules adopted relative to RSA 147-A in the amount of twelve thousand, four hundred and forty-four dollars (\$12,444.00).

231. Respondent is strictly liable to the State for all costs directly or indirectly resulting from such violation that the State has incurred or will incur pursuant to RSA 147-A:17, III.

232. Such costs are inclusive and not duplicative of the response costs to address the discharge of oil addressed in Count II, *supra*.

**COUNT IV: CIVIL PENALTIES FOR
DISCHARGE OF OIL IN VIOLATION RSA 146-A:3**

233. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

234. Respondent discharged oil into the surface waters of the State and into and onto land areas where oil will ultimately seep into surface water or groundwater.

235. For the time period alleged herein, Respondent violated RSA 146-A:3.

236. Pursuant to RSA 146-A:14, II-a, the Respondent is liable for a civil penalty of up to \$20,000 for each continuing day of each violation.

**COUNT V: CIVIL PENALTIES FOR
FAILURE TO UNDERTAKE IMMEDIATE MEASURES TO MINIMIZE
THE EXTENT OF POLLUTION AND DAMAGE CAUSED BY
A DISCHARGE OF OIL IN VIOLATION OF RSA 146-A:4, I**

237. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

238. Respondent discharged oil into the surface waters of the State and into and onto land areas where oil will ultimately seep into surface water or groundwater.

239. Respondent failed to immediately, within fifteen (15) days, or otherwise at any time undertake measures to minimize the extent of pollution and damage which the discharge of oil would otherwise cause, as per NHDES' September 2, 2021 Letter of Deficiency LOD WMD #21-037, in violation of RSA 164-A:4, I.

240. For the time period alleged herein, Respondent violated RSA 146-A:4, I.

241. Pursuant to RSA 146-A:14, II-a, the Respondent is liable for a civil penalty of up to \$20,000 for each continuing day of each violation.

**COUNT VI: CIVIL PENALTIES FOR FAILING TO
UNDERTAKE TO CONTAIN OR REMOVE THE DISCHARGE OF OIL
TO THE DEPARTMENT'S SATISFACTION PURSAUNT TO RSA 146-A:4, II**

242. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

243. Respondent discharged oil into the surface waters of the State and into and onto land areas where oil will ultimately seep into surface water or groundwater.

244. Respondent failed to immediately or otherwise undertake to contain or remove the discharge of oil at the Property on or before September 26, 2021 as per NHDES' July 26, 2021 Notice of Initial Complaint Investigation, in violation of RSA 146-A:4, II.

245. Respondent failed to immediately, within fifteen (15) days, or otherwise at any time, undertake to contain or remove the discharge of oil at the Property as per NHDES' September 2, 2021 Letter of Deficiency LOD WMD #21-037, in violation of RSA 146-A:4, II.

246. Pursuant to RSA 146-A:14, II-a, the Respondent is liable for a civil penalty of up to \$20,000 for each continuing day of each violation.

**COUNT VII: CIVIL PENALTIES FOR FAILURE TO COMPLY
WITH THE NHDES ORDER PURSUANT TO RSA 146-C:10**

247. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

248. Respondent did not appeal Administrative Order No. 19-002 WMD.

249. For the time period alleged herein, Respondent violated RSA 146-C:10 by failing to comply with Administrative Order No. 19-002 WMD.

250. Pursuant to RSA 146-C:10, I, Respondents are subject to a civil penalty of up to \$10,000 per day for the violation of rules promulgated under RSA 146-C:9-a, as alleged herein.

**COUNT VIII: CIVIL PENALTIES FOR VIOLATIONS OF RSA 146-C:19, II
PURSUANT TO RSA 146-C:10**

251. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

252. Administrative Order No. 19-002 WMD issued on February 13, 2019 found that Respondent had violated RSA 146-C:19, II, by failing to conduct and record monthly visual inspections of the Facility meeting certain minimum requirements under the direction of the class

A or B operator for the Facility; and by failing to repair or otherwise resolve deficiencies discovered at the Facility. *Id.* at 9.

253. Respondent did not appeal Administrative Order No. 19-002 WMD.

254. For the time period alleged herein, Respondent violated RSA 146-C:19, II.

255. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of RSA 146-C:19, II.

COUNT IX: CIVIL PENALTIES FOR VIOLATIONS OF Env-Or 405.09, AND Env-Or 406.08 (Now Env-Or 406.02), PURSUANT TO RSA 146-C:10

256. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

257. Administrative Order No. 19-002 WMD issued on February 13, 2019 found that Respondent had violated Env-Or 405.09, and Env-Or 406.08 (now Env-Or 406.02), by failing to repair or replace severely corroded or damaged electrical conduit or work boxes in the sumps for Tanks #9 and #10 at the Facility.

258. Respondent did not appeal Administrative Order No. 19-002 WMD.

259. For the time period alleged herein, Respondent violated Env-Or 405.09, and Env-Or 406.08 (now Env-Or 406.02).

260. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of Env-Or 405.09, and Env-Or 406.08 (now Env-Or 406.02).

COUNT X: CIVIL PENALTIES FOR VIOLATIONS OF Env-Or 406.16 (Now Env-Or 406.09), PURSUANT TO RSA 146-C:10

261. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

262. Administrative Order No. 19-002 WMD issued on February 13, 2019 found that Respondent had violated Env-Or 406.16 (now Env-Or 406.09), by failing to conduct annual testing of the automatic line leak detectors at the Facility.

263. Respondent did not appeal Administrative Order No. 19-002 WMD.

264. For the time period alleged herein, Respondent violated Env-Or 406.16 (now Env-Or 406.09).

265. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of Env-Or 406.16 (now Env-Or 406.09).

COUNT XI: CIVIL PENALTIES FOR VIOLATIONS OF Env-Or 406.19
(Now Env-Or 406.12), PURSUANT TO RSA 146-C:10

266. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

267. Administrative Order No. 19-002 WMD issued on February 13, 2019 found that Respondent had violated Env-Or 406.19 (now Env-Or 406.12) by failing to test the spill containment integrity of the USTs at the Facility.

268. Respondent did not appeal Administrative Order No. 19-002 WMD.

269. For the time period alleged herein, Respondent violated Env-Or 406.19 (now Env-Or 406.12).

270. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of Env-Or 406.19 (now Env-Or 406.12).

COUNT XII: CIVIL PENALTIES FOR VIOLATIONS OF Env-Or 406.20
(Now Env-Or 406.13), PURSUANT TO RSA 146-C:10

271. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

272. Administrative Order No. 19-002 WMD issued on February 13, 2019 found that Respondent had violated Env-Or 406.20 (now Env-Or 406.13), by failing to make available to NHDES documentation showing annual testing of all leak monitoring equipment and devices during the inspection of the Facility on August 31, 2018.

273. Respondent did not appeal Administrative Order No. 19-002 WMD.

274. For the time period alleged herein, Respondent violated Env-Or 406.19 (now Env-Or 406.12).

275. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of Env-Or 406.20 (now Env-Or 406.13).

COUNT XIII: CIVIL PENALTIES FOR VIOLATIONS OF Env-Or 406.24(b)
(Now Env-Or 406.17(b), PURSUANT TO RSA 146-C:10)

276. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

277. Administrative Order No. 19-002 WMD issued on February 13, 2019 found that Respondent had violated Env-Or 406.24(b) (now Env-Or 406.17(b)), by failing to test the primary containment tightness of the USTs at the Facility.

278. Respondent did not appeal Administrative Order No. 19-002 WMD.

279. For the time period alleged herein, Respondent violated Env-Or 406.24(b) (now Env-Or 406.17(b)).

280. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of Env-Or 406.24(b) (now Env-Or 406.17(b)).

**COUNT XIV: CIVIL PENALTIES FOR VIOLATIONS OF
Env-Or 408.05(c) PURSUANT TO RSA 146-C:10**

281. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

282. Administrative Order No. 19-002 WMD issued on February 13, 2019 found that Respondent had violated Env-Or 408.05(c) by failing to permanently close Tank #8 on the Property by December 22, 2015.

283. Respondent did not appeal Administrative Order No. 19-002 WMD.

284. For the time period alleged herein, Respondent violated Env-Or 408.05(c).

285. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of Env-Or 408.05(c).

**COUNT XV: CIVIL PENALTIES FOR VIOLATIONS OF
Env-Or 504.04(a) AND Env-Or-504.05 PURSUANT TO RSA 146-C:10**

286. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

287. Administrative Order No. 19-002 WMD issued on February 13, 2019 found that Respondent had violated Env-Or 504.04(a) and Env-Or 504.05, by failing to conduct and document monthly maintenance inspections of all Stage I equipment at the Facility.

288. Respondent did not appeal Administrative Order No. 19-002 WMD.

289. For the time period alleged herein, Respondent violated Env-Or 504.04(a) and Env-Or 504.05.

290. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of Env-Or 504.04(a), and Env-Or 504.05.

**COUNT XVI: CIVIL PENALTIES FOR VIOLATIONS OF
Env-Or 504.04(b) AND Env-Or-504.06 PURSUANT TO RSA 146-C:10**

291. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

292. Administrative Order No. 19-002 WMD issued on February 13, 2019 found that Respondent had violated Env-Or 504.04(b), and Env-Or 504.06, by failing to conduct and document annual maintenance inspections of all Stage I equipment at the Facility.

293. Respondent did not appeal Administrative Order No. 19-002 WMD.

294. For the time period alleged herein, Respondent violated Env-Or 504.04(b), and Env-Or 504.06.

295. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of Env-Or 504.04(b), and Env-Or 504.06.

**COUNT XVII: CIVIL PENALTIES FOR VIOLATION OF RSA 146-C:19, II(a)
PURSUANT TO RSA 146-C:10**

296. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

297. The July 17, 2020 resignation of the Facility's only Class A and B Operator left the Facility without the Class A and B Operator to conduct or direct monthly visual inspections at the Facility, in continuing violation of RSA 146-C:19, II(a) from July 17, 2020 to date.

298. For the time period alleged herein, Respondent violated RSA 146-C:19, II(a).

299. Pursuant to RSA 146-C:10, I, Respondent is subject to a civil penalty of up to \$10,000 per day for the violation of RSA 146-C:19, II(a).

**COUNT XVIII: CIVIL FORFEITURE FOR VIOLATION OF HAZARDOUS WASTE
ACT RULES AT THE PROPERTY PURSUANT TO RSA 147-A:9, I.**

300. The State realleges and restates all of the preceding paragraphs as if stated herein in full.

301. NHDES' September 2, 2021 Letter of Deficiency LOD WMD #21-037 requested that Respondent identify the contents of the abandoned drums in the back lot of the facility and conduct hazardous waste determinations on all waste containers located at the facility as required by Env-Hw 502.01, manage the containers of hazardous waste according to the applicable requirements of Env-Hw 500 and dispose of the containers of hazardous waste at an approved facility.

302. Respondent failed to identify, label, manage and dispose of hazardous waste at the Property, in violation of as required by Env-Hw 502.01 and 807.06.

303. For the time period alleged herein, Respondent violated Env-Hw 502.01 and 807.06.

304. Pursuant to RSA 147-A:17, Respondent is subject to a civil forfeiture of up to \$50,000 for each day of a continuing violation of Env-Hw 502.01 and 807.06.

PRAYER FOR RELIEF

WHEREFORE, the State of New Hampshire Department of Environmental Services respectfully requests that this Court:

A. Issue a permanent injunction requiring the Respondent to comply with the NHDES Order by permanently closing underground storage tank #8 on the Property and submitting a permanent closure report in accordance with Env-Or 408.06 through Env-Or 408.10;

B. Issue a permanent injunction requiring the Respondent to permanently close underground storage tanks #9 and #10 on the Property and submit a permanent closure report in accordance with Env-Or 408.06 through Env-Or 408.10;

- C. Order Respondent George C. Morse, Sr. to pay the State's costs recoverable pursuant to RSA 146-A:3-a, I and RSA 147-A:17, III in the total amount of twelve thousand, four hundred and forty-four dollars (\$12,444.00);
- D. Order Respondent George C. Morse, Sr. to pay civil penalties pursuant to RSA 146-A:14, II(a) and RSA 146-C:10 for the violations alleged herein;
- E. Impose a civil forfeiture on Respondent George C. Morse, Sr. pursuant to RSA 147-A:17, I for the violations alleged herein, and;
- F. Grant the State such other and further relief as to the Court seems just, proper and equitable.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

By its Attorney,

JOHN M. FORMELLA,
ATTORNEY GENERAL

Dated: April 11, 2022

/s/ Mark L. Lucas
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