



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

EMAIL ONLY

March 5, 2024

[Brian J. Thibeault](#)

Kingsbury Acquisition, LLC
300 Gay Street
Manchester, NH 03103

REQUEST FOR SITE INVESTIGATION

Subject Site: Keene – Kingsbury Corp, 80 Laurel Street
DES Site #199102028, LUST Project #2745

Notification of Release, prepared by Enviro North American Consulting, LLC,
dated November 8, 2023 (Activity #322580)

Dear Mr. Thibeault:

The New Hampshire Department of Environmental Services (NHDES) has reviewed the above referenced report, and other information in our files, regarding the discharge of petroleum hydrocarbons at the subject site. The oil discharge was confirmed by the presence of Total Petroleum Hydrocarbons as Diesel Range Organics (TPH-DRO) at a concentration of 13,000 milligram per kilogram (mg/kg) in the soil sample identified as T6-DS-1. In addition, a discharge of oil to groundwater was confirmed by the presence of oily sheen observed on the groundwater surface during excavation activities indicating that a discharge of oil, as defined in New Hampshire Code of Administrative Rules Env-Or 600 Contaminated Site Management, has occurred at the subject site.

Kingsbury Acquisition, LLC is a *strictly liable party*, under New Hampshire State Law, RSA Chapter 146-A:3-a., with respect to this discharge. Under this State Law, 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 the 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. A Notice of Strict Liability is enclosed with this letter. As a responsible party, Kingsbury Acquisition, LLC must take all steps necessary to stop and contain the discharge, remove the free product, conduct any requested studies, and remediate the remaining soil and groundwater contamination to state standards.

NHDES has determined that Kingsbury Acquisition, LLC a responsible party with respect to this discharge and requires that you complete a Site Investigation. The Site Investigation is necessary to assess the full extent of soil and groundwater contamination, identify potential human and environmental receptors, and develop an appropriate remedial action. The requirements of the Site Investigation are detailed in Env-Or 606.03 through 606.09. These rules are available on our website at [NHDES Permits, Rules and Regulatory: Administrative Rules](#).

The Site Investigation report is due within 120 days of receipt of this letter. NHDES will provide guidance on the need for further investigation, remediation or closure of this project after we have reviewed the Site Investigation report. The Site Investigation and report shall be completed by, or under the direction of, a professional engineer or professional geologist licensed under RSA 310-A, and the report shall bear the seal of the professional responsible for the work.

www.des.nh.gov

PO Box 95, 29 Hazen Drive, Concord, NH 03302-0095
Telephone: (603) 271-3899 Fax: (603) 271-2181 TDD Access: Relay NH 1-800-735-2964

Facility Compliance and Cost Reimbursement

The New Hampshire Petroleum Reimbursement Fund Program (Fund) provides financial assistance to qualified owners of petroleum storage facilities who incur costs for investigation and cleanup of contamination from the release of petroleum products. To qualify for Fund coverage, the facility must be in compliance with all applicable state and federal rules for petroleum storage facilities.

A review of our files indicates that eligibility has not yet been determined for this facility. To secure eligibility, Kingsbury Acquisition, LLC must submit a cover letter, a Request for Reimbursement Authorization Form, information concerning private insurance coverage, and certification of tank compliance. Copies of the cover letter format and form are attached. Prompt submittal of eligibility documentation will facilitate claims processing and reimbursement. If you have questions regarding Fund eligibility, please contact Jennifer Marts, P.G., Petroleum Fund Management Section Supervisor at (603) 271-2570 or by email at Jennifer.Marts@des.nh.gov.

To receive reimbursement from the Fund, all work must be pre-approved and conducted in accordance with New Hampshire Code of Administrative Rules Odb-400. Please direct your consultant to submit for NHDES approval a detailed work scope and budget for using the [Unit Based Rates and Service Providers, Contracts & Markup tables](#). The work scope and budget is due within 30 days of receipt of this letter.

Please do not hesitate to contact me if you have any questions regarding this letter.

Sincerely,



Erik Paddleford
Oil Remediation & Compliance Bureau
Tel: (603) 271-3431
Fax: (603) 271-2181
Email: Erik.Paddleford@des.nh.gov

Enclosure: Notice of Strict Liability
 Example Cover Letter
 Request for Reimbursement Authorization Form

ec: Margaret Bastien, P.E., ORCB
 Jennifer A. Marts, P.G., ORCB
 Keene Health Officer
 [Dena J. Wunsch](#), Enviro North American Consulting, LLC

Route/ec: Renée S. Strondak, P.G., ORCB

**NOTICE OF STRICT LIABILITY FOR OIL DISCHARGE – RSA 146-A
REQUEST FOR INSURANCE COVERAGE DETERMINATION**

A. OIL STORAGE FACILITY/PROPERTY, ON-SITE SPILL, OR UNKNOWN SOURCE



Type (check one): Motor Fuel AST ("LAST") ☐ Motor Fuel UST ("LUST") ☒ Fuel Oil AST ("FUEL") ☐
On-Premise-Use Fuel Oil ("OPUF") ☐ Motor Oil ("MOST") ☐ On-Site Spill ☐ Unknown Source ☐

B. FACILITY AND/OR PROPERTY, OR LOCATION INFORMATION

(1) Facility and/or property, or location name	(1) Kingsbury Corporation
(2) Address	(2) 80 Laurel Street
(3) Town	(3) Keene
(4) NHDES facility registration/permit number, if applicable	(4) UST #0110849
(5) NHDES site number and project number	(5) NHDES #199102028; LUST #2745
(6) Date of discovery	(6) 2/11/1991

C. OWNER/RESPONSIBLE PARTY INFORMATION

(1) Owner/Responsible Party name	(1) Kingsbury Acquisition, LLC
(2) Mailing address	(2) 300 Gay Street Keene, NH 03431
(3) Day/Evening phone	(3) 603-641-8608

D. NOTICE OF STRICT LIABILITY & STATEMENT OF INSURANCE REQUIREMENTS

The New Hampshire Department of Environmental Services (NHDES) has determined that as of the date listed in B(6), the person(s) or entity listed in C(1) is strictly liable under New Hampshire RSA 146-A:3-a for cleanup of the oil discharge discovered at the location listed in B(1) through B(3). NHDES has or will issue specific instructions for performing cleanup, and requires that insurance coverage information be provided. A state fund, which is designed to be excess coverage to any private insurance, may be available for cleanup cost reimbursement if private insurance is unavailable or insufficient. Pursuant to Insurance Department Bulletin INS No. 11-009-AB, upon receipt of this Notice, the private insurer must make a coverage determination as to whether or not the State's claim in strict liability for damages to waters of the State is covered by the policy. Coverage determination notification to the insured must comply with the guidelines outlined in New Hampshire Code of Administrative Rules, Part Ins 1002.

A handwritten signature in black ink, appearing to read "Eric Padden".

2/26/2024

NHDES Representative & Date Signed

SEE INFORMATION AND GENERAL INSTRUCTIONS ON PAGE 2

E. INFORMATION AND GENERAL INSTRUCTIONS

- New Hampshire's Oil Pollution Control statute (RSA 146-A) gives NHDES primary jurisdiction over oil spill cleanup operations. Responsible parties must perform the cleanup to the Department's satisfaction and be consistent with the Department's directives. RSA 146-A:4, I; see also RSA 146-A:7. The law also authorizes NHDES to perform cleanup, but the liable parties will be billed for those services, which must be paid in order to obtain a release from the State that cleanup work is complete.
- Under New Hampshire law (RSA 146-A:3-a), any person who causes or suffers a discharge of oil into or onto any surface water or groundwater, or in a land area where oil will ultimately impact water, is **strictly liable** for cleanup. Petroleum storage tank facility owners, and owners of land where such facilities are or were located, need to understand that they are legally liable even if they were not negligent in the operation of a facility.
- NHDES expects private insurance companies to pay cleanup costs that are covered under the insurance policy. Once NHDES has issued a Notice of Strict Liability, the party determined to be strictly liable is responsible for seeking a **coverage determination** from each private insurance company that has issued a policy on the property or oil storage facility. Coverage determinations from insurance agents interpreting policies are not acceptable. The coverage determination must be from the insurance company or an authorized adjuster, based on a claim filed by the insured. If there is no private insurance, the owner or company officer must supply NHDES with a notarized letter stating this fact.
- The New Hampshire Petroleum Reimbursement Fund Program oil spill cleanup funds, available under RSA 146-D, RSA 146-E and RSA 146-F, provide excess insurance coverage. Private insurance for cleanup costs and/or third-party damages must be exhausted before the State funds are available. The initial request for reimbursement authorization under the State funds must include documents to demonstrate there is no private insurance coverage.
- When water contamination becomes known during a cleanup initially financed by State funds, but it is later determined that there is coverage under a private insurance policy, NHDES expects the insurance company to assume the cost of any water quality assessment that is necessary. Costs excluded from coverage under private insurance may be covered by the State excess insurance funds, provided all eligibility requirements are met.
- The N.H. Department of Insurance (DOI) has issued Bulletin INS No. 11-009-AB to insurance companies regarding the process for handling insurance claims relating to oil discharges, where NHDES has issued a Notice of Strict Liability. The Bulletin directs insurers to issue coverage decisions (i.e., denial or payment of a claim) in accordance with DOI rules, Ins 1002 (http://www.gencourt.state.nh.us/rules/state_agencies/ins1000.html). The Bulletin advises insurers they must give the insured written notice of the reason for denial in whole or in part of any claim; under Ins 1002.06(a), this includes notice of the applicable policy provision upon which denial is based. The Bulletin also encourages insurers to make their oil discharge coverage decisions consistent with the approach outlined in this notice.
- If a private insurer (1) is non-responsive to a request for a coverage determination, (2) states that the policy does not cover the State's strict liability claim, or (3) will not certify that such coverage is not available under its policy, State fund coverage may still be provided. However, the State reserves its right to take legal action against the insurer to recover costs.
- NHDES personnel will complete the Notice of Strict Liability form as soon as possible after an oil discharge is reported and initially investigated, and water impacts are found. The owner/responsible party should provide a copy of both sides of the completed form to their insurance company to request a coverage determination. The owner/responsible party should report the results of the coverage determination to NHDES immediately. The findings of the coverage determination must be included with the owner's request for State excess insurance fund coverage.

If you have questions, email Jennifer.Marts@des.nh.gov or call (603) 271-2570.