

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

CLARENCE BROWN, INC.
Respondent

ADMINISTRATIVE ORDER

Having found that Clarence Brown, Inc. has committed a violation as defined in 10 V.S.A. §8002(9), the Secretary (Secretary) of the Agency of Natural Resources (Agency), pursuant to the authority set forth in 10 V.S.A. §8008, hereby issues the following Administrative Order:

VIOLATIONS

1. 10 V.S.A. §6615b: failure to perform site investigation and corrective action measures;
2. 10 V.S.A. §6616: prohibited release of hazardous materials to surface and/or groundwater and/or land of the state.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Clarence Brown, Inc. is a Vermont registered corporation which owns and/or operates a bulk fuel storage facility and recycling facilities at 96 Federal Street in St. Albans, Vermont (Site #99-2646). Clarence Brown, Inc. owned and operated a gasoline station at the intersection of Hathaway Road and Route 36 in St. Albans Bay (Site #98-2519).
2. On July 14, 1994, the Waste Management Division ("WMD") sent a Notice of Alleged Violation ("NOAV") via certified mail to Respondent, directing it to remove four (4) abandoned underground storage tanks ("USTs") that had been out-of-service

since 1988 at the St. Albans Bay facility, Site #98-2519. The USTs included: one 1,000 gallon diesel tank; one 1,000 gallon kerosene tank; and two 4,000 gallon gasoline tanks. Respondent failed to comply in a timely manner.

3. Respondent retained Environmental Products & Services, Inc. ("EPS") to remove the four (4) USTs identified in paragraph 2 on September 3, 1998. EPS submitted a report to the Department of Environmental Conservation UST Program on or about October 16, 1998. In the report, EPS concluded that the two 4,000 gallon gasoline tanks had failed based upon the deteriorated condition of the tanks and the surrounding stained soils that were observed. EPS recommended further site investigation to delineate and quantify the subsurface contamination.

4. On December 23, 1998, the Sites Management Section ("SMS") of the WMD sent Respondent a letter requesting site investigation activities be conducted, along with any necessary corrective action at Site #98-2519. Respondent failed to comply.

5. On February 1, 1995, after a site visit to the Federal Street facility, Site #99-2646, on October 7, 1994, the WMD sent a NOAV via certified mail to Respondent, for failure to store approximately 300 lead acid batteries under cover on an impervious surface. The NOAV directed Respondent to properly store and dispose of lead acid batteries. Respondent did not respond to the NOAV.

6. On May 25, 1996, after site visits to the Site #99-2646 on October 26, 1995 and May 22, 1996, the WMD sent Respondent a Second NOAV via certified mail, for failure to store approximately 75 lead acid batteries under cover on an impervious surface. The NOAV directed Respondent to properly store and dispose of lead acid batteries. Respondent did not respond to the NOAV.

7. On July 29, 1998, the WMD conducted an inspection of Site #99-2646. The WMD observed 11 lead acid batteries that were not stored under cover on an impervious surface. The WMD also observed that there were open containers of lead and copper ammunition casings on the grounds.

8. On October 1, 1998, the WMD sent Respondent a NOAV via certified mail, for failure to store lead acid batteries, as well as lead and copper casings, under cover on an impervious surface at Site #99-2646. The NOAV directed Respondent to properly store lead acid batteries, and lead and copper casings, and to notify the Agency "that the necessary modifications have been made to your hazardous waste management program" within fifteen (15) days. Respondent did not respond to the NOAV.

9. On December 22, 1998, the WMD sent Respondent a NOAV via certified mail, for failure to store lead acid batteries, as well as lead and copper casings, under cover on an impervious surface. The NOAV also directed Respondent to hire a consultant to conduct a site investigation at Site #99-2646.

10. On April 30, 1999, the WMD conducted a follow up inspection at Site #99-2646, and observed that the lead acid batteries were stored under cover on an impervious surface, and that the copper and lead casings were stored in 55 gallon drums.

11. On July 20, 1999, the SMS sent a letter to Respondent via certified mail directing Respondent to determine the degree and extent of contamination to soil and groundwater, and conduct any necessary corrective action measures at both facilities, Site #98-2519 and Site #99-2646.

12. On or about August 12, 1999, EPS submitted a proposed work plan to perform site investigations at both facilities, Site #98-2519 and Site #99-2646.

13. In a letter to Respondent dated October 12, 1999, the SMS denied the proposed work plan submitted by EPS, and requested Respondent to provide further information to supplement the proposed work plan. No further information was received.

14. On February 4, 2000, the Environmental Court entered as an Order an Assurance of Discontinuance ("AOD") between the Agency and Respondent regarding the violations described in paragraphs 5-9 above. The AOD and Court Order required Respondent to, among other things, "abide by the Agency's Department of Environmental Conservation Sites Management Section site investigation and remediation deadlines pursuant to VUSTR §8-604 and VHWMR §7-105(b)." Respondent failed to comply.

15. On October 21, 2003, the SMS sent a letter to Respondent again requesting Respondent to undertake site investigation/corrective action activities at Site #98-2519. Respondent failed to respond.

16. On August 29, 2004, the WMD received a report prepared by Environmental Compliance Services, Inc. ("ECS"), a consultant for the St. Albans Cooperative Creamery, which owns property adjacent to Site #98-2646. The report documents petroleum contamination found at the St. Albans Cooperative Creamery, which originated from above ground storage tanks ("ASTs") at Site #98-2646.

17. On September 21, 2004, the SMS sent a letter to Respondent via certified mail requesting compliance with the Agency's corrective action procedures at Site #98-2519. Respondent failed to comply.

18. On September 28, 2004, the SMS sent a letter to Respondent via certified mail requesting compliance with the Agency's corrective action procedures at Site #98-2646.

Respondent failed to comply.

19. On September 28, 2004, the SMS sent a second letter to Respondent via certified mail, directing Respondent to conduct site investigation/corrective action procedures at Site #98-2646, as well as to treat or dispose of the contaminated soils stockpiled at the St. Albans Cooperative Creamery. Respondent failed to comply.

20. To date, Respondent is in violation of 10 V.S.A. §6615b and 10 V.S.A. §6616.

ORDER

Upon receipt of this Administrative Order, the Respondent shall:

- A. For the violations described above, Respondent shall pay a penalty of \$17,500.00. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Ms. Becky Buchanan, Administrative Assistant
Environmental Enforcement Division
Agency of Natural Resources
103 South Main Street, 2 South
Waterbury, VT 05671-0410

The above penalty amount may not necessarily include all the costs incurred by the Secretary for the enforcement of the above-described violation(s) or the full amount of economic benefit gained by the Respondent from the violation(s). The Secretary reserves the right to augment the above stated penalty through evidence presented at hearing. In accordance with 10 V.S.A. §8010, the penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter and by the total amount of economic benefit gained by the Respondent from the violation(s), each according to proof at the hearing.

- B. No later than fifteen (15) consecutive calendar days following the effective date

of this Order, Respondent shall retain a qualified environmental consultant to conduct a site investigation at both facilities, Site #98-2519 and Site #99-2646, in accordance with the WMD's Site Investigation Guidance, effective August 1996.

C. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondent shall cause to be conducted a site investigation at Site #98-2519 and Site #99-2646, which shall address the following:

1. delineation of the degree and extent of contamination to the soil and groundwater resulting from the lead acid battery storage area, the lead and copper casing storage area, and the ASTs at Site #99-2646, as well as the USTs at Site #98-2519.
2. installation of a sufficient number of monitoring wells to adequately define the severity of the contamination, in the event it is discovered through sampling that contamination has migrated to groundwater.
3. assessment of the potential for sensitive receptors to be impacted by the contamination, including: basements of adjacent buildings, nearby surface water, any public or private drinking water wells in the vicinity of the site, wetlands, sensitive ecologic areas, outdoor and indoor air, sewers, or utility corridors, and for direct contact to contaminated soil. If any water supplies appear at risk from this contamination, they shall be sampled and analyzed for the contamination of concern (e.g. petroleum, lead, etc. ...).
4. determination of the need for a long term treatment and/or monitoring plan which addresses any soil and/or groundwater contamination.
5. active recovery of any free phase petroleum product measured in the

ground in excess of 1/8 inch.

D. No later than sixty (60) consecutive calendar days from the effective date of this Order, Respondent shall submit a plan for approval by the SMS to treat or dispose of the contaminated soils stockpiled at the St. Albans Cooperative Creamery as described in paragraph 19 above.

E. No later than sixty (60) consecutive calendar days from the effective date of this Order, Respondent shall submit a summary report to the SMS which describes the work performed at both facilities, Site #98-2519 and Site #99-2646, pursuant to the WMD's Site Investigation Guidance, effective August 1996, as well as conclusions and recommendations.

F. No later than sixty (60) consecutive calendar days from the effective date of this Order, Respondent shall submit to the SMS for approval a work plan for corrective action and cost estimate for the petroleum portion for the above referenced work at both facilities, Site #98-2519 and Site #99-2646, in accordance with the WMD's Corrective Action Guidance, effective November 1997. No work may be performed under the work plan prior to approval by the SMS.

G. Respondent shall comply with all applicable environmental laws and regulations in the operation of its businesses.

H. Respondents shall promptly respond, within the time lines specified, to any subsequent review comments, directives or requests for information from the WMD.

I. An extension of the deadlines set forth in this Order may be granted at the discretion of the SMS to address any difficult site issues, inclement weather, or to perform specific tasks at an appropriate time of year..

J. The State of Vermont and the Agency reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth hereinabove.

RESPONDENT'S RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL COURT

The Respondent has the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. §8012 by filing a Notice of Request for Hearing within fifteen (15) days of the date the Respondent receives this Administrative Order. The Respondent must timely file a Notice of Request for Hearing with both the Secretary and the Environmental Court at the following addresses:

1. Secretary, Agency of Natural Resources
c/o: Enforcement Division, 2 South
103 South Main Street
Waterbury, Vermont 05671-0411

2. Clerk, Environmental Court
1218 Airport Road
Barre, Vermont 05641

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within fifteen (15) days of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondent does not make a timely filing of a Notice of Request for Hearing, this Administrative Order shall become a final Administrative Order.


COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondent fails or refuses to comply with the conditions of a final Administrative Order, the Secretary shall have cause to initiate an enforcement action against the Respondent pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Waterbury, Vermont, this 18th day of November, 2005.

**SECRETARY, AGENCY OF NATURAL
RESOURCES**

BY: _____


Jeffrey Wennberg, Commissioner
Department of Environmental Conservation

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES

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Affidavit of Richard Spiese

I, Richard Spiese, being duly sworn do attest:

1. I am of legal age and a resident of the State of Vermont.
2. I am employed as the Environmental Analyst in the Sites Management Section of the Waste Management Division of the Department of Environmental Conservation, Agency of Natural Resources.
3. Based upon personal observations, review of Agency files, and conversations with witnesses, the violations described in Administrative Order occurred on or about the dates set forth therein.

Dated at Waterbury, Vermont this 15th day of November,
2005.

Richard Spiese
Richard Spiese - Affiant

Subscribed and sworn before me on the 15th of November, 2005.

Carolyn B. Buchanca
Notary Public
My Commission Expires: 2-10-07