

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Agency of Natural Resources,)
Petitioner,)
)
v.)
)
Whiting Country Store, LLC,)
Respondent.)

Docket # 44-5-15 Vtec

FINDINGS

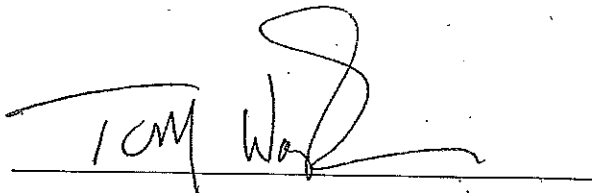
PURSUANT TO 10 V.S.A. §8008(d) THE COURT FINDS AS FOLLOWS:

1. The Administrative Order in this matter has been properly served on the Respondent(s) in accordance with 10 V.S.A. §8008(a).
2. The Respondent(s) has/have not timely requested a hearing in this matter in accordance with 10 V.S.A. §8008(b).
3. The order otherwise meets the requirements of 10 V.S.A. Chapter 201.

ORDER

By the Court's signature below, the Administrative Order in this matter, filed with the Superior Court, Environmental Division, on April 29, 2015, has become a final Judicial Order pursuant to 10 V.S.A. §8008(d)(2).

Dated this 21st day of May 2015.

A handwritten signature in black ink, appearing to read 'Tom Walsh', is written over a horizontal line.

Thomas G. Walsh
Environmental Judge

STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
Docket No.**

**SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff**

v.

**WHITING COUNTRY STORE, LLC,
Respondent**

ADMINISTRATIVE ORDER

Having found that Whiting Country Store, LLC (Respondent) 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:

VIOLATION

1. 10 V.S.A. §6615b: Failure to initiate corrective action

STATEMENT OF FACTS

1. Respondent is a Vermont-registered corporation which owns the Whiting Country Store, located on Route 30 in Whiting, VT (the facility).
2. Petroleum contamination was discovered at the facility in 2001 during a real estate transaction and the Agency's Sites Management Section (SMS) initially required remediation.
3. The previous owner of the property conducted initial work to identify and characterize the contamination and began evaluating possible remedial measures, however this work stopped when Respondent took ownership of the property in 2004.
4. The SMS requested Respondent initiate corrective action by letters dated 9/18/06, 7/27/11, and 2/25/13 however to date Respondent has failed to initiate Corrective Action in violation of 10 V.S.A. §6615b.

ORDER

Upon receipt of this Administrative Order, the Respondent shall:

- A. Pay a penalty of \$21,000.00 no later than thirty (30) consecutive calendar days following the effective date of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Assistant
Agency of Natural Resources
Compliance & Enforcement Division
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803

The Secretary reserves the right to augment the above stated penalty based upon the evidence adduced at the hearing in this matter. The penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter, by the total amount of economic benefit gained by the Respondent from the violations(s) and by further consideration of any other component of penalty found in 10 V.S.A. §8010, each according to proof at hearing.

- B. No later than fifteen (15) consecutive calendar days following the effective date of this Order, Respondent shall hire a qualified consultant to evaluate the petroleum contamination on the property.
- C. No later than forty-five (45) consecutive calendar days following the effective date of this Order, Respondent shall have its consultant submit a site investigation report.
- D. No later than sixty (60) consecutive calendar days following the effective date of this Order, Respondent shall have its consultant submit a Corrective Action Feasibility Investigation work plan (CAFI) to the Agency's Sites Management Section for review and approval.
- E. No later than forty-five (45) consecutive calendar days following Agency approval of the CAFI, Respondent shall have its consultant submit a Corrective Action Plan (CAP), along with a timeline for initiation and completion of CAP activities, to the Agency's Sites Management Section for review and approval.

- F. In the event the Agency rejects the CAFI or CAP in whole or in part, Respondent shall have the consultant submit a revised CAFI or CAP to the Agency which addresses those aspects of the CAFI or CAP that were rejected for review and approval no later than fourteen (14) consecutive calendar days following the Agency's rejection. In the event of additional rejections, Respondent shall submit any subsequent revisions for Agency approval no later than fourteen (14) consecutive calendar days following the rejection.
- G. Respondent shall initiate and complete corrective action in accordance with, and within the timelines of, the approved CAP.

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: Compliance & Enforcement Division,
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803
2. Clerk, Superior Court, Environmental Division
32 Cherry St. 2nd Floor, Suite 303
Burlington, VT 05401

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 Judicial Order when filed with and signed by the Environmental Court.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondent fails or refuses to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondent including but not necessarily limited to, those available to the Secretary pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Montpelier, Vermont this 11th day of March, 2015.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 

David Mears, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

WHITING COUNTRY STORE, LLC,
Respondent

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 an Environmental Analyst in the Sites Management Section in the Waste Management and Prevention Division of the Agency of Natural Resources.
3. Based upon review of the Waste Management and Prevention Division file relevant to this matter, personal knowledge, and conversations with witnesses, the violation described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at Montpelier, Vermont this 9th day of March, 2015.

Richard Spiese
Richard Spiese - Affiant

Subscribed and sworn before me on the 9th of March, 2015.

H. K.
Notary Public

My Commission Expires: 2-10-19.