

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

ANR v Rowley Fuels, Inc.

22-ENV-00013

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 8th day of November, 2021 and filed with the Superior Court, Environmental Division, on the 24th day of January, 2022, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically Signed: 1/25/2022 2:40 PM pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

ROWLEY FUELS, INC.,
Respondent

VIOLATIONS

1. Aboveground Storage Tank (AST) Rules §9-103(a): Release of hazardous materials
2. AST Rules §9-103(b): Failure to immediately report a release
3. AST Rules §9-306(b)(1): Failure to inspect immediately after tank system installation
4. AST Rules §9-306(b)(2): Failure to inspect immediately after initial delivery of fuel to the tank system
5. AST Rules §9-306(c)(7): Failure to ensure there are no unused opening in the tank
6. AST Rules §9-306(e)(1): Failure to utilize inspection checklist form
7. AST Rules §9-306(e)(2): Failure to provide tank owner with a copy of the inspection checklist

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Secretary (Secretary) of the Agency of Natural Resources (Agency) and Rowley Fuels, Inc., (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent is a domestic profit corporation that owns and operates a fuel delivery service in Milton, Vermont.
2. On or about November 5, 2020, Respondent's employee, Scott Allard (Mr. Allard), began the installation process for a 266-gallon aboveground storage tank (AST) in the basement of a domicile located at 45 John Rowley Road in Milton, Vermont (the property). Mr. Allard did not complete the installation.
3. On or about November 6, 2020, Respondent's employee, Kayden Keith (Mr. Keith), installed the AST's fill and vent pipes but did not connect the AST to the furnace. The AST's outlet

- pipe was uncapped, and the shut-off valve was left in the open position.
4. On November 9, 2020, Respondent filled the AST with 230 gallons of fuel oil. The fuel oil was able to flow into the structure via the AST's outlet pipe.
 5. On November 10, 2020, Respondent reported to the Agency that a release of approximately 175 gallons of fuel oil, a hazardous material, had occurred at the property. Respondent reported that the release occurred because a "new tank install and new tech didn't turn tank off."
 6. On November 10, 2020, Agency personnel visited the property and met with Lawrence Rowley, the son of the property owner.
 7. Mr. Rowley advised that he had moved his elderly mother out of the residence due to the fumes from the release.
 8. Mr. Rowley advised that he had discovered the release at approximately 3 PM on November 9, 2020 and had observed pooled fuel oil in the basement. Mr. Rowley advised that he notified Respondent of the release and they responded that evening.
 9. After speaking with Mr. Rowley, Agency personnel inspected the basement and observed that it had a soil floor. Absorbent material had been spread on the basement floor. The location of the absorbent material and staining of the soil indicated that the release had occurred from the oil filter end of the new AST.
 10. Agency personnel also observed that the fuel line to the furnace had not been attached to the new AST outlet pipe, nor had it been plugged. The new AST fuel gauge showed a quarter full. The label on the side of the new AST provided the tank capacity to be 266 gallons.
 11. Agency personnel estimated the release to be approximately 163.5 gallons.
 12. On November 10, 2020, Agency personnel contacted Mr. Allard who confirmed the cause of the release had been the valve at the outlet not being closed.
 13. Agency personnel asked Mr. Allard if an inspection checklist had been completed for the new AST. Mr. Allard advised that he believed Mr. Keith had completed the inspection checklist back at the company's office and was likely in the mail to the property owner.
 14. On November 10, 2020, Agency personnel contacted Mr. Keith, who was working in the basement as part of the cleanup. Mr. Keith advised that he had been responsible for installing the fill and vent pipes for the new AST but that he had not filled out an inspection checklist for the new AST. Mr. Keith advised he had given permission to fill the AST on November 9, 2020.

15. On November 10, 2020, Agency personnel relocated to the Respondent's office and met with Mr. Allard and asked again about the tank inspection checklist. Mr. Allard presented a tank inspection checklist, signed by Mr. Allard, dated November 5, 2020. Several of the sections on the tank inspection checklist had been completed prior to the Respondent performing those activities.
16. Mr. Rowley later provided the Agency with a copy of the tank inspection checklist he received from Respondent postmarked November 10, 2020.
17. Respondent admits the factual findings described above, solely for purposes of resolving this case.
18. The Agency alleges that the above conduct constitutes violations of AST Rules §§9-103(a), 9-103(b), 9-306(b)(1), 9-306(b)(2), 9-306(c)(7), 9-306(e)(1), and 9-306(e)(2).

AGREEMENT

Based on the foregoing Statement of Facts and Description of Violations, the parties agree as follows:

A. For the violations described above, Respondent shall pay a total penalty of \$13,500.00.

Payment shall be made by either:

1. Check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Services Coordinator
Environmental Compliance Division - Enforcement
Agency of Natural Resources
1 National Life Drive, Davis 3
Montpelier, VT 05620-3803

Or

2. Credit card or electronic check payment through the Agency's online system at:
https://anronline.vermont.gov/?formtag=ANR_EnforcementPenaltyPayment

Payment shall be received no later than thirty (30) consecutive calendar days following the date this Assurance is entered as an Order by signature of the Superior Court, Environmental Division (Effective Date).

- B. No later than ten (10) consecutive calendar days following the Effective Date of this Assurance, Respondent shall submit the final cleanup report to the Agency.
- C. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above in order to resolve all outstanding disputes.

- D. Respondent agrees that the violations alleged are deemed proved and established as a “prior violation” in any future state proceeding that requires consideration of Respondent’s past record of compliance, such as permit review proceedings and calculating civil penalties under 10 V.S.A. §8010.
- E. 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 herein above.
- F. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected the Respondent’s on-going obligation to comply with all other federal, state or local statutes, regulations or directives applicable to the Respondent in the operation of its business.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, this Assurance shall become a judicial order. In the event that such order is vacated, this Assurance shall be null and void.
- H. The Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein occurring before the effective date of the Assurance, provided Respondent fully complies with the agreements set forth above.
- I. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.
- J. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. Chapters 201 and/or 211.
- K. This Assurance is subject to the provisions of 10 V.S.A. §§8007 and 8020.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Further, I, Scott K. Allard, the undersigned, hereby state under oath that I am the President of Rowley Fuels, Inc., and an authorized representative of Rowley Fuels, Inc., and that I have the power to contract on behalf of that entity, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at 11:50 AM, Vermont, this 8 day of NOVEMBER, 2021.

Scott K. Allard
Rowley Fuels, Inc.
Scott K. Allard, President

STATE OF VERMONT
COUNTY OF Chittenden, SS.

At 11:51 am, Vermont this 8 day of November, 2021, the above signatory personally appeared, signed, and swore to the foregoing, before me,

[Signature]
Notary Public State of Vermont

Printed Name Erin Hibbard
Commission No. 197.0011011
My Commission Expires 1.31.23

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this 20th, day of December, 2021.

SECRETARY. AGENCY OF NATURAL RESOURCES

By: [Signature]
Peter Walke, Commissioner
Department of Environmental Conservation