

State of Vermont  
Water Resources Board

Re: Appeal of LaBrie  
Docket No: 89-07

Authority: 10 V.S.A. § 1933

Decision and Order

This is an appeal of a decision of the Agency of Natural Resources (Agency) dated October 4, 1989, denying reimbursement of costs incurred by LaBrie, Inc. for the removal of two (2) underground storage tanks (USTs).

the hearing

1. By letter dated October 17, 1988, the Agency directed LaBrie, Inc. to remove the USTs on LaBrie, Inc.'s property located on Route 14 in South Barre by November 30, 1988. In response to this letter, LaBrie, Inc. removed the USTs and sought reimbursement pursuant to 10 V.S.A. § 1926.
2. Under 10 V.S.A. § 1926 (b) a person owning land can seek reimbursement for the reasonable costs of the removal or closing of a UST if all three of the following conditions are met: (1) the person owning the land can establish that after making a diligent and appropriate investigation he or she had **no knowledge** or reason to know of the existence of an UST; (2) the person owning the land has given all reasonable assistance in the removal or closing of the UST; and (3) the person owning the land is ordered to remove or close the UST, and does so.

By decision dated August 4, 1989, the Hazardous Materials Management Division denied LaBrie, Inc. reimbursement because **LaBrie, Inc.** did not meet two of the three conditions for reimbursement as required by 10 V.S.A. § 1926: (1) LaBrie, Inc. had knowledge or reason to know of the **existence** of the USTs; and (2) the **letter** of October 17, 1988, was not an "order" for LaBrie, Inc. to remove or close the USTs. By decision dated October 4, 1989, the **Commissioner** of the Department of Environmental Conservation (DEC) affirmed the Hazardous Materials Management Division decision. Subsequently, LaBrie, Inc. appealed the decision of the Commissioner to the Board in a timely manner.

4. The appellant LaBrie, Inc. is "the person owning the land" within the meaning of 10 V.S.A. § 1926 (b)(2), and gave all reasonable assistance in the removal of the USTs.
5. The appellant knew or had reason to know of the existence of the USTs within the meaning of 10 V.S.A. § 1926 (b)(1). At the time of the purchase of the property located on Route 14 in South Barre, Monroe McCandless, the appellants predecessor in title, represented that the USTs were on the land and further represented that the USTs use could continue. Additionally, the sales agreement between the McCandlesses and the LaBries, dated December 5, 1985, refers to and includes as personal property, the two USTs at issue.
6. Although the letter, dated October 17, 1988, which was sent to LaBrie, Inc. directs that the USTs "must" be removed by November 30, 1988, it is not an "order" within the meaning of 10 V.S.A. § 1926 (b)(3). The letter specifically states that if the USTs are not removed voluntarily, then the Secretary of the Agency "shall issue a removal order in accordance with 10 V.S.A. 1932." Section 1932 enables the Secretary to issue orders, with respect to USTs, to protect human health or the environment.

#### Conclusions and order

The appellant LaBrie, Inc. appealed the decision of the DEC regarding the reimbursement of the costs of the removal of two USTs. LaBrie, Inc. a that it is entitled to reimbursement since it has met the conditions of 10 V.S.A. § 1926 (b).

Section 1926 directs the Secretary of the Agency to reimburse the person-owning the land for the reasonable costs of removing or closing a UST. The Secretary can only reimburse if the following three conditions are met:

"(1) the person owning the land can establish that after making a diligent and appropriate investigation he or she had no knowledge or reason to know of the existence of an underground storage tank, (2) the person owning the land has given all reasonable assistance in the removal or closing of the tank, and (3) the person owning the land is ordered to remove or close the: tank and does so."

10 V.S.A. § 1926 (b). Accordingly, if any one of the above three conditions is not met, the request for reimbursement will be denied.

In this appeal, the parties agreed that the appellant had met condition (2) above -- LaBrie, Inc. was "the person owning the land" and gave all reasonable assistance in the removal of

the USTs. The disagreement then was whether LaBrie, Inc. had knowledge or reason to know of the existence of the USTs and whether LaBrie, Inc. had been ordered to remove the USTs.

Under Section 1926(b)(1), LaBrie, Inc. must establish that after making a diligent and appropriate investigation it had no knowledge or reason to know of the existence of the USTs. LaBrie, Inc. argues that even though the sales agreement for the property located on Route 14 in South Barre includes the USTs and even though at the time of purchase of the property Monroe McCandless, LaBrie, Inc.'s predecessor in title, represented that the USTs were on the property, LaBrie, Inc. believed that the USTs did not exist. LaBrie, Inc. argues that its belief was based on the following information: (1) the USTs were not recorded in the local land records as required by statute; (2) if the USTs existed they should have been taxed by the Town of Barre as personal property; (3) there was not a bill of sale for the USTs; (4) personal property was not included in the warranty deed; and (5) at the closing Monroe McCandless stated that personal property was not being included in the sale.

Although LaBrie, Inc. claims that it had no knowledge or reason to know of the existence of the USTs, we are not persuaded. The USTs were referred to and included as personal property in the sales agreement, dated December 5, 1985, which LaBrie, Inc. stipulated to as genuine. Also, at the time of the purchase of the land located on Route 14 in South Barre, Monroe McCandless represented to LaBrie, Inc. that the USTs were on the property and further represented that the UST's use could continue. Stipulation of Facts, dated May 29, 1990. LaBrie, Inc. then, knew or had reason to know of the existence of the USTs. Accordingly, the appellant has not met one of the requisite conditions for reimbursement under 10 V.S.A. § 1926(b), and therefore the decision of the Commissioner of the DEC must be affirmed.

The appellant raises a number of other issues with respect to this appeal, including whether LaBrie, Inc. was "ordered" to remove the USTs, whether the Agency failed to follow their own procedures for removal of the abandoned USTs, and whether the DEC's inspection of the appellant's property violated 10 V.S.A. §1931.

Although LaBrie, Inc. did receive a letter, dated October 17, 1988, which directed LaBrie, Inc. to remove the USTs by November 30, 1988, this letter was not an "order" within the meaning of section 1926(b)(3). The letter specifically states that the removal of the USTs should be done voluntarily within the time specified or the "Secretary of the Agency of Natural Resources shall issue a removal order in accordance with 10 V.S.A. 1932." (Emphasis added). Even though this letter is not an order within the meaning of the statute, the Board recognizes that this letter uses rather demanding language. Certainly, LaBrie, Inc. should be commended for removing the USTs which

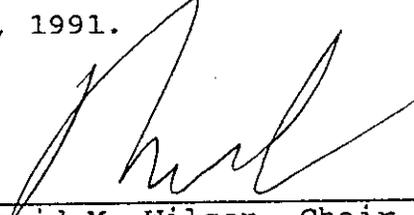
that this letter uses rather demanding language. Certainly, **LaBrie, Inc.** should be commended for removing the USTs which otherwise may have posed an imminent and substantial danger to the environment.

**LaBrie, Inc.**'s failure to prove one of the conditions required **in** order to obtain reimbursement under the statute, is dispositive of this case, and therefore the Board will not address the other issues.

**Order**

The decision of the Commissioner of the DEC is affirmed.

Dated this <sup>18</sup> day of April, 1991.



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David M. Wilson, Chair  
Sheldon M. Novick  
Elaine B. Little  
Mark DesMeules  
David Deen.