

Sullivan County NH

**Type of meeting: Board of Commissioners Executive Session Meeting
Minutes Per RSA 91-A:3.II.c and e – Possible Pending
Claim Issue**

Date/Time: Tuesday, March 22, 2011; 4:56 PM

**Place: Unity County Complex, Community Corrections Center,
106 County Farm Road, Claremont NH 03743**

Attendees: Commissioners Bennie Nelson – *Chair*, Jeffrey Barrette – *Vice Chair*
and John M. Callum Jr. – *Clerk*; Greg Chanis – *County Administrator*;
John Cressy – *Facilities Director*; and Kirsten Skeie – *Account Clerk
II/Receptionist/Minute Taker*.

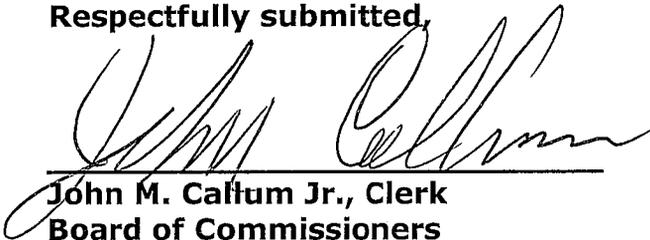
**Agenda Item No. 8. Probable Executive Session Per RSA 91-
A:3.II.c and e – Possible Pending Claim**

**4:56 Motion: to go into Executive Session Per RSA 91:A:3.II.c and e for a
possible pending claim issue. Made by: Barrette. Seconded by:
Callum Jr. Roll call vote: All in favor.**

Mr. Chanis noted, at the time of the oil spill in the boiler room at the Nursing Home the County was told it would be no big deal to recover associated costs. The State's Oil Fund Disbursement Board - Cleanup fund – is comprised of State legislatures, who determine whether oil spill cleanups are disburseable. The contractor submitted all paperwork. The spill consisted of 10-20 gallons, the well was contained quickly, clean-up shows no contaminants. A letter sent to County in Jan of 2009 notes an inspection was conducted and advice was given stating water was noticed accumulating in the lower sump. Mr. Chanis distributed copies of the January 2009 letter, and the Fuel Oil UST Compliance Chronology, which he reviewed with the Board. All underground storage tanks have to be insured for \$100,000. There may be an administrative fine for being non-compliant. The state accepted everything the County submitted and never requested they attain insurance for the underground tank. Mr. Cressy feels they will say the County cannot access the state refund but can still use the fund. State is saying problem happened when our installer disconnected the pipe from boiler room, slid off sleeve and hooked the new one to the boiler. They think we should have updated the pipe when we slid off the conduit. Cleanup costs were paid from the Emergency Line in FY10. Year to date, County expended approximately \$27,000. Mr. Chanis briefly discussed a line in the HR Department for legal fees. County will know more on decision in a few weeks. Unsure where County will take money from, but Mr. Chanis is confident the General Fund will not be over expensed due to the issue.

**5:22 Motion: to come out of Executive Session. Made by: Barrette.
Seconded by: Nelson. Voice vote: All in favor.**

Respectfully submitted,



**John M. Callum Jr., Clerk
Board of Commissioners**

JC/ks

Date minutes approved: April 5, 2011

Per motion at 4/5/11 meeting, minutes will be kept sealed until issue resolved, to revisit in a few months.

11/1/2011 Minutes released.

The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

January 23, 2009

MARK KENNY
SULLIVAN COUNTY NURSING HOME
5 NURSING HOME DR
CLAREMONT, NH 03743

Subject Site: UNITY, SULLIVAN COUNTY NURSING HOME, 5 NURSING HOME DR
DES Site #198907008, UST Facility #0112928, Project Type UST

Reference: Underground Storage Tank Facility Compliance Inspection Notice of Findings

On January 23, 2009 the New Hampshire Department of Environmental Services (DES) conducted an on site inspection of the underground storage tank (UST) systems at the above referenced facility. The inspection was conducted to determine the level of compliance with key elements of the New Hampshire Code of Administrative Rules Env-Wm 1401 Underground Storage Facilities (UST Rules). These rules were established for the purpose of reducing the number of product releases to the environment from UST systems and to establish a leak detection system which would alert a facility owner or operator before significant environmental damage and economic loss occurs. The inspection conducted at this facility is part of DES's release prevention effort.

Deficiencies noted during this inspection warrant your facility to be considered in "substantial non-compliance." This means they pose a threat of a release to the environment and may result in a release going undetected.

GENERAL

TANK #6 (Containing #4 HEATING OIL with Capacity of 12000 gallons)

Env-Wm 1401.25 requires spill containment devices be installed and maintained in good working order on all UST systems.

The division's inspector has determined that the fill cover was broken or missing and must be repaired or replaced.

Please repaired or replaced cover and provide maintenance results.

Env-Wm 1401.27 and/or 1401.31 requires leak monitoring for piping be installed and continuous operate.

The division inspector has determined that a piping sump sensor was not installed at the tank sump.

Please install a piping sump sensor at the tank location, provide monitor installation records or close tank and provide closure results.

Env-Wm 1401.27 and/or 1401.31 requires leak monitoring for piping be installed and continuous operate.

The Department's inspector has determined that there is liquid accumulating in lower sump.

Please determine cause of liquid accumulation, repair sump and submit report to DES of maintenance or notify DES that this tank system is empty of all product and is temporarily closed.

**Sullivan County Health Care
Fuel Oil UST Compliance Chronology**

Fuel Oil Underground Storage Tank Background

The Sullivan County Health Care (SCHC) facility is located off of Nursing Home Drive in Unity, New Hampshire. The facility which is owned and operated by Sullivan County is heated using fuel oil stored in a 12,000-gallon underground storage tank (UST). The UST is located on the south side of the Stern/Saunders Building. According to NHDES files, the UST is a composite dual-wall tank which was installed in 1989. The UST piping was replaced in 1997 and 2010 in accordance with designs reviewed and preapproved by NHDES.

January 23, 2009

NHDES inspected the facility and issued SCHC an UST compliance inspection notice of findings. The compliance deficiencies noted on the 12,000-gallon #4 fuel oil UST (Tank #6) included:

1. Replace the broken fill cover at the tank.
2. Install a secondary piping sump sensor.
3. Determine the cause of liquid (groundwater) accumulating in the lower secondary containment sump.

The NHDES requested that SCHC complete the Tank #6 repairs and provide a report with documentation that the work has been completed or empty the UST and notify the NHDES that the UST was temporarily closed.

American Tank Management, Inc. (ATMI) of Manchester, New Hampshire attended the January 23, 2009 UST inspection and pumped water from the sump to assess the cause of groundwater entering the sump. ATMI discussed replacing the secondary containment sump piping boots with NHDES inspector Suzanne Picone. According to ATMI, NHDES inspected the visible primary piping and secondary containment sump and indicated to proceed with replacing the secondary sump liquid sensor, repair the sump seals to prevent the infiltration of groundwater and to replace the fill cover.

July 7, 2009

NHDES issued SCHC a notice of violation referencing the January 23, 2009 Tank #6 UST inspection compliance deficiencies. The NHDES requested SCHC to complete the repairs previously described and provide documentation that the work had been completed or empty the UST and notify the NHDES that the UST was temporarily closed.

July 2009

SCHC retained ATMI to replace the fill cover, install a sump liquid sensor and repair the sump seals. ATMI contacted the NHDES UST Program Administrator Tom Beaulieu and described the proposed repairs which included disconnecting and reconnecting the UST primary piping above grade in the boiler room at a metal fitting, installing secondary containment piping boots at the sump, installing a sump sensor and a new fill cover. NHDES indicated to ATMI to proceed with the proposed repairs and did not request replacing the primary piping or submitting design plans for NHDES review.

August 10, 2009

ATMI submitted correspondence to NHDES indicating the sump sensor had been installed and a spill cover and secondary sump piping boots had been ordered. ATMI further indicated that NHDES would be notified when the remaining items required for compliance had been installed.

September 28, 2009

The current SCHC Facilities Director John Cressy was hired to manage the facility USTs. Maintenance foreman Mark Kenny previously acted as the SCHC contact regarding the facility USTs.

October 7, 2009

ATMI submitted correspondence to NHDES indicating the remaining items for UST compliance had been installed and the system secondary containment system had tested tight using an air pressure test.

December 2, 2009

ATMI conducted the annual leak monitoring test which indicated the system was in proper operation and submitted the documentation to NHDES. According to SCHC and ATMI, the NHDES did not respond to the August, October or December 2009 submittals, therefore it was understood that the UST system was in compliance with Env-Wm 1401 rules.

June 2, 2010

A fuel oil release occurred from primary UST piping at an aboveground location in the boiler room. Costs associated with the Initial Response Action (IRA) by CAB Services of Dover, New Hampshire were pre-approved for ODDCF reimbursement by NHDES.

July 2010

SCHC submitted stamped design plans and specifications to replace the Tank #6 piping system which were reviewed and approved by NHDES. SCHC has expended over \$10,000 to upgrade the current Tank #6 piping system.

October 2010

NHDES conducted a final inspection of the new UST piping and issued a permit to operate the current UST system.

October 13, 2010

In response to an ODDCF reimbursement request, NHDES submitted correspondence to SCHC indicating that ODDCF coverage is not available for the June 2, 2010 fuel oil release because subsequent piping repairs were not completed in accordance with Env-Wm 1401.38(c) nor were plans for the repair submitted for NHDES review in accordance with Env-Wm 1401.20. The NHDES further indicated that the June 2, 2010 release was a direct result of the installation of unapproved piping.

Conclusion

NHDES did not request design plans for the, fill cover, secondary containment liquid sensor or secondary sump piping boot repairs. The primary piping was not replaced or removed and was previously approved by NHDES for installation in the 1997 design. The June 2, 2010 fuel oil release occurred over 8 months after the Tank #6 UST system repairs requested by NHDES were completed and the release was not related to the Tank #6 UST system being out of compliance with Env-Wm 1401 rules.

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE February 28, 2011

FROM Timothy R. Denison, Supervisor
Fund Management Section

AT (OFFICE) Waste
Management Division (DES)

SUBJECT Unity, Sullivan County Home, Request for Eligibility Reconsideration/Waiver of Odb 405.01(c)
(DES No. 198907008, OPUF Project No. 24315)

TO Rep. D.L. Chris Christensen, Chairman
Oil Fund Disbursement Board

Situation

The Facilities Director for the Sullivan County Home (SCH) is requesting reconsideration of Fuel Oil Discharge Cleanup Fund eligibility for an on-premise-use heating oil storage facility. The basis of the request is presented in the attached correspondence, which includes a copy of the October 13, 2010 DES letter denying eligibility. There were releases of fuel oil in 1996 and 2003, and fund coverage was provided. In June 2010 there was another release that DES attributes to the unauthorized re-installation of piping that does not meet standards. Therefore, eligibility was denied pursuant to Odb 405.01(c), which requires that compliance must be maintained after an initial release. The cleanup project is near completion and total costs are approximately \$25,000.

DES Response to Reconsideration Request & Enforcement Action

The repairs made to correct the deficiencies found in a January 2009 inspection were beyond the scope allowed by Env-Wm 1401.38, and a violation of Env-Wm 1401.20 occurred because plans were not submitted. This was not determined until after the June 2, 2010 release, based on a DES site investigation and supervisory file review. Specifically, the piping system repair made on September 30, 2009 and October 1, 2009 was not allowable under Env-Wm 1401.38 because it involved re-installing original primary piping that did not meet new piping standards. Thus, the repair method chosen would not have been approved had plans been submitted. Based on DES communications with the piping installer, we understand he misinterpreted the regulatory requirements, believing the repair was in-scope and no plan submittal required, and that the materials were acceptable for re-use. The post-release inspection revealed the pipe was in very poor condition. As a result, DES maintains that the facility was not in compliance in June 2010, and remained so until temporary closure in August 2010. SCH submitted a new piping design that was reviewed and approved for use by DES on October 28, 2010, and the facility is now in compliance after installation of the new piping.

DES is proposing enforcement action for the SCH regulatory violations by issuing an administrative fine by consent through the Commissioner's Office.

Board Waiver Criteria

Waiver submittal/action criteria provided under Odb 409.01 is as follows:

(a) *An owner or applicant may request that the board waive the application of the rules of this chapter pertaining to fund eligibility and reimbursement, unless such request, if granted, would constitute a waiver of statutory requirements.*

(b) Requests for waivers shall be submitted in writing to the board and shall include the following information:

(1) A specific reference to the section of the rule for which a waiver is being sought;

(2) A full explanation of why a waiver is necessary;

(3) A full explanation of the alternatives for which a waiver is being sought, if applicable, with supportive information; and

(4) A full explanation of how the granting of a waiver would be consistent with the intent of RSA146-D, RSA 146-E, RSA 146-F, or RSA 146-G and this chapter.

(c) The board shall approve a request for a waiver upon finding that the alternatives proposed are at least equivalent to the requirements of this chapter, and are adequate to ensure that the provisions of the statutes are met.

(d) The board shall provide written notice of its decision.

Attachments: SCH request for reconsideration
Excerpts from administrative rules