

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. _____

STATE OF VERMONT,)
AGENCY OF NATURAL)
RESOURCES,)
Plaintiff,)
)
v.)
)
HIGHLANDS FUEL DELIVERY, L.L.C.,)
doing business as IRVING ENERGY,)
Defendant)

PLEADINGS BY AGREEMENT

Plaintiff Vermont Department of Environmental Conservation, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Defendant Highlands Fuel Delivery LLC (d/b/a Irving Energy) hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

A. THE STATE'S ALLEGATIONS

(i) The Parties

1. Vermont Department of Environmental Conservation (DEC) is a state agency with offices in Montpelier, Vermont. As part of its operations, DEC oversees and regulates aboveground storage tanks and permits. DEC is an agency established by statute within the Agency of Natural Resources (ANR) under 3 V.S.A. § 2837.
2. Defendant, Highlands Fuel Delivery, LLC, doing business as Irving Energy

(hereafter referred to as “Irving Energy”), is a New Hampshire limited liability corporation, with a principal place of business at 190 Commerce Way in Portsmouth, New Hampshire.

(ii) Statutory and Regulatory Structure

ANR Aboveground Storage Tank Rules

3. Pursuant to 10 V.S.A. §§ 1929a and 6601–6622b, ANR adopted the Vermont Aboveground Storage Tank Rules (hereafter referred to as “AST Rules”), codified at 16-3 VT. CODE R. §§ 204:9-101–309 (2017), to “protect public health and the environment by establishing standards for the design, installation, and inspection of all aboveground storage tank systems [...] and all bulk storage tank systems.”
4. “Aboveground storage tank,” defined at § 204:9-201, is “any tank, other than an underground storage tank, used to store any of the following petroleum products: gasoline, diesel, kerosene, used oil, or heating oil.”
5. “Aboveground storage tank system,” defined at § 204:9-201, is “the above-ground storage tank and all associated piping, vent and fill pipes, vent alarm and whistle, fuel filter and shut-off valves.”
6. Pursuant to Section 204:9-306(a), “all [aboveground] storage tank systems shall be inspected at least once during every three-year period.”
7. Under Section 204:9-306(b)(1)–(2), inspections of aboveground storage tank systems must occur “immediately after tank system installation” and “immediately after initial delivery of fuel to the tank system.”

8. Inspections of aboveground storage tank systems must be “visibly inspected for compliance” with the standards outlined in Section 204:9-306(c) by an inspector certified per Section 204:9-306(d).
9. Inspectors must report non-compliant tank systems in accordance with the procedures outlined in Section 204:9-306(f).

Vermont Hazardous Waste Management Statute

10. The State of Vermont prohibits the release of hazardous materials pursuant to 10 V.S.A. § 6616.
11. “Hazardous material,” defined at 10 V.S.A. § 6602(16)(A)(ii), in relevant part, is “all petroleum and toxic, corrosive, or other chemicals and related sludge included in [...] petroleum, including crude oil or any fraction thereof.”
12. “Release,” defined at 10 V.S.A. § 6602(17), is “any intentional or unintentional action or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, dumping, or disposing of hazardous materials into the surface or groundwaters, or onto the lands into the State, [...] when damage may result to the public health, lands, waters, or natural resources in the jurisdiction of the State.”
13. Under 10 V.S.A. § 8221, the Attorney General is authorized to bring enforcement actions in superior court to enforce Vermont’s environmental laws, including violations of Chapter 59 (Aboveground Storage Tanks), and all “rules, permits, assurances, or orders implementing” such laws.

14. Under 10 V.S.A. § 8002(9), a “violation” is defined as “noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permit, assurances, or orders.” Chapter 59 is a statute identified in 10 V.S.A. § 8003.

(iii) Facts Relating to Defendant

July 2019 – Middlesex, Vermont

15. On July 23, 2019, Irving Energy delivered approximately 206 gallons of fuel oil to 169 Sunny Brook Road in Middlesex, Vermont.
16. The homeowner noticed and reported an odor to Irving Energy.
17. In response, a technician from Irving Energy returned to the property and, in an effort to determine the source of the odor, cut into and removed a portion of the homeowner’s wooden deck to reveal portions of the tank system obstructed by the deck.
18. After removal of the portion of the wooden deck , the technician observed rusted and corroded tank system piping that had leaked fuel oil during the delivery.
19. ANR investigated the incident and confirmed a spill of approximately 10 gallons of fuel oil. The spill resulted from the rusted and corroded tank system piping.
20. The rusted and corroded piping was not inspected prior to the fuel delivery because it was obstructed within and by the homeowner’s wooden deck. Had this portion of the tank system piping been fully inspected, then the

system would have been “red tagged” as a failed system due to corroded and rusted piping, and no fuel delivery would have been made.

January 2021 – Barre, Vermont

21. On January 27, 2021, an outside company installed an aboveground storage tank and associated piping and filled the tank with ten gallons of fuel oil at 15 Currier Street in Barre, Vermont.
22. On January 29, 2021, at the customer’s request, Irving Energy delivered fuel to the residence and filled the new tank without performing an immediate inspection of the new system after filling the tank. The homeowner was not present during the fuel oil delivery
23. Upon return, the homeowner noticed a fuel oil odor, fuel oil on the side of the tank, and fuel oil on the ground in the gravel collection area of the moisture collection system on the property.
24. The homeowner informed Irving Energy of the release and, in response, Irving Energy dispatched a technician to inspect the new tank.
25. The technician inspected the tank and observed that the outside company that had installed the new tank had not installed a compression fitting correctly, which directly resulted in the release of fuel oil from the oil tank system when the tank was filled.
26. The homeowner and Irving technician arranged for a cleanup, which amounted to seven to ten gallons of spilled fuel oil and removal of 150

pounds in waste, including removed gravel, absorbents, and captured fuel oil.

(iv) The State's Position

27. The State alleges that the above conduct constitutes: (i) a violation of Aboveground Storage Tank Rules, §§ 306(b)(2); 306(c), for failure to inspect tank systems; and (ii) release of hazardous materials per 10 V.S.A. § 6616.

B. DEFENDANT'S RESPONSE TO THE ALLEGATIONS

28. Defendant admits the factual findings described above in ¶¶ 2, 15-26, solely for purposes of resolving this case.

29. Without formally admitting wrongdoing or liability, Defendant agrees to this settlement of the violations alleged above in order to resolve all outstanding disputes related to these incidents.

30. Defendant further agrees that each of the violations alleged in paragraph 28 above is deemed proven and established as a "prior violation" in any future state proceeding considering Defendant's compliance record(s), including but not limited to future administrative or judicial enforcement actions for civil penalties calculated under Title 10, and permit proceedings.

C. STIPULATION FOR ENTRY OF CONSENT JUDGMENT

31. The Parties hereby stipulate and agree that the attached Consent Agreement and Final Order is in the public interest and may be entered as a final judgment in this matter.

DATED at Montpelier, Vermont this 13th day of June, 2022.

STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL



By: _____
Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
(802) 828-3186

DATED at Portsmouth, New Hampshire this 20th day of June, 2022.

HIGHLANDS FUEL DELIVERY, LLLC
doing business as IRVING ENERGY,



Gregory B. Poitras
Secretary
June 20, 2022

By: _____
[name/title], authorized agent

Approved as to form:



By: _____
Gregory B. Poitras
U.S. General Counsel
Irving Oil

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