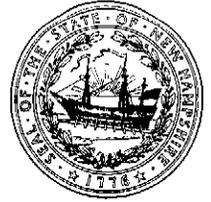




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

December 7, 2016

James Wheeler, P.E., Manager  
City of Berlin, New Hampshire  
168 Main Street  
Berlin, NH 03570

**Re: Administrative Order by Consent, Docket No. 16-031 WMD**  
10 Jericho Road, Berlin, NH – UST #0111623/DES Site #200007061

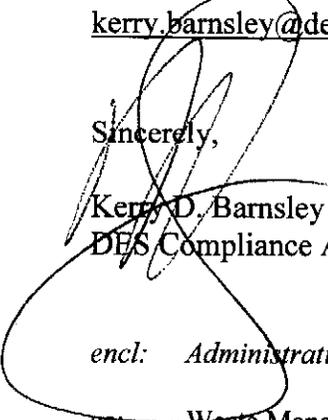
Dear Mr. Wheeler:

Enclosed please find the Administrative Order by Consent agreement negotiated between the New Hampshire Department of Environmental Services (DES) and the City of Berlin, New Hampshire. If the agreement remains acceptable, please sign, date, and return the entire document [all 4 pages] to me at:

**DES Legal Unit, Attn: Compliance Attorney, P.O. Box 95, Concord, NH 03302-0095**

A fully-executed copy of the agreement will be returned to you for your records after it has been signed by the Commissioner of DES. If you have any questions, comments or concerns about the enclosed document, please contact me directly at 603-271-7509, or via e-mail at [kerry.barnsley@des.nh.gov](mailto:kerry.barnsley@des.nh.gov).

Sincerely,

  
Kerry D. Barnsley  
DES Compliance Attorney

encl: *Administrative Order by Consent for signature*

cc: Waste Management Division distribution list



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

City of Berlin, New Hampshire  
Attn: James Wheeler, P.E., Manager  
168 Main Street  
Berlin, NH 03570

Re: 10 Jericho Road, Berlin, NH  
UST #0111623/DES Site #200007061

**ADMINISTRATIVE ORDER  
BY CONSENT**

**No. 16-031 WMD**

**A. INTRODUCTION**

This Administrative Order by Consent is issued by the Department of Environmental Services, Waste Management Division to, and with the consent of, the City of Berlin, New Hampshire, under the authority of RSA 146-C:9-a. This Administrative Order by Consent is effective upon signature by the parties.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division (“DES”), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive in Concord, New Hampshire.
2. The City of Berlin, New Hampshire is a duly-constituted municipality of the State of New Hampshire having a mailing address of 168 Main Street, Berlin, New Hampshire 03570.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 146-C authorizes the Department of Environmental Services (“DES”) to regulate the installation, maintenance, operation, licensing and closure of underground storage facilities. The Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Or 400 (previously Env-Wm 1401) to set forth the requirements for underground storage facilities by establishing criteria for registration and permitting and standards for design, installation, operation, maintenance, and monitoring of such facilities (the “UST Rules”) in accordance with RSA 146-C:9.
2. The City of Berlin is the recorded owner of real property located at 10 Jericho Road in Berlin, New Hampshire; more particularly identified on Berlin Tax Map 10 as Lot 69 (the “Property”).
3. One 15,000-gallon gasoline, steel, double-walled underground storage tank (“UST”) that is not monitored to grade at the dispenser (“Tank #4”); and, and one 15,000-gallon diesel, steel, double-walled UST with non-safe suction piping without leak monitoring (“Tank #5”) were previously constructed on the Property, further identified by DES as UST #0111623 at DES Site #200007061 (the “Facility”).
4. The Facility is subject to the requirements of RSA 146-C and the UST rules.

5. RSA 146-C:3 requires the owner of each existing UST facility to register the facility on forms provided by DES.
6. On December 1, 2010, DES issued a new permit-to-operate the Facility (#0111623) to the City of Berlin. The new permit does not expire.
7. Env-Or 408.05(c) states “[w]ith the exception of vent piping, any part of an existing single wall UST system that routinely contains regulated substance without secondary containment and leak monitoring shall be permanently closed by **December 22, 2015.**” (**emphasis added**)
8. Pursuant to Env-Or 408.06(a), “[t]he owner shall notify [DES] at least 30 days prior to any UST system permanent closure.”
9. On September 2, 2015, DES received a UST Closure Notification for the Facility on the Property. A date certain for permanent closure of the Facility was not included in the notice.
10. RSA 146-C:15 requires DES to perform an on-site inspection to determine whether a storage tank or facility is non-compliant with DES rules for spill prevention, overflow protection, release detection, leak monitoring, or corrosion protection. Upon determining non-compliant status, DES shall provide written notification to the facility owner and facility operator on the nature of the operational deficiencies, the applicable regulatory requirements, options available for correcting the deficiencies, and the deadline for completion of the work. Upon failure of a facility owner or operator to correct such operational deficiencies to the satisfaction of DES by the established deadline, DES shall issue a written notice of "Intent to Red-Tag" to the facility owner and facility operator, and shall provide notification to all oil delivery companies that have requested to receive such notifications. The notice shall include the deadline after which date DES personnel will red-tag the non-compliant storage tank or facility. Before affixing a red tag to the fill pipe of an underground storage tank or facility, DES shall document the level of stored product in the tank or facility.
11. RSA 146-C:14 states that no person shall deliver or cause the delivery of oil to a non-compliant storage tank or facility which has been red-tagged. No owner or operator of a facility may deposit or allow the deposit of oil into an underground storage tank or facility that has a red tag affixed to the tank or facility's fill pipe. No person may deposit oil into an underground storage tank or facility that has a red tag affixed to the fill pipe. No person shall deface, alter, or otherwise tamper with a red tag so that the information contained is not legible.
12. On May 19, 2016, DES issued Notice of Intent to Red Tag No. 16-064, and Letter of Deficiency No. 16-069, to the City of Berlin per RSA 146-C:15 and the UST Rules. In the Notice/Letter, DES reminded the City of Berlin of the operational deficiencies at the Facility, the applicable regulatory requirements, options available for correcting the deficiencies, and the deadline for completion of the work before the Facility would be red-tagged. DES requested an updated registration form for the Facility from Berlin.
13. On June 15, 2016, DES received a new Registration for Underground Storage Tank Systems form for the Facility. The registration form, dated May 31, 2016, was signed by the Berlin Public Works Director. The director listed Berlin as the Facility Owner on the registration form. The director reported Tanks #4 and #5 at the Facility to be in use.

14. To date, DES has not received notice that Tanks #4 and #5 at the Facility have been permanently closed.

#### **D. DETERMINATION OF VIOLATIONS**

Berlin violated Env-Or 408.05(c) by failing to permanently close Tanks #4 and #5 at the Facility in accordance with Env-Or 408.06 through Env-Or 408.10, by December 22, 2015.

#### **E. ORDER**

Based on the above findings, DES hereby orders Berlin, and Berlin agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. **By May 15, 2017**, Berlin shall temporarily close Tanks #4 and #5 at the Facility in accordance with Env-Or 408.04(a) and (b); and, shall notify DES of its intent to permanently close Tanks #4 and #5 at the Facility in accordance with Env-Or 408.06(a).
2. **By June 15, 2017**, Berlin shall submit an amended UST registration form for Tanks #4 and #5 at the Facility in accordance with Env-Or 408.04(d); and, shall permanently close Tanks #4 and #5 at the Facility in accordance with Env-Or 408.06 through Env-Or 408.10.
3. **By July 15, 2017**, Berlin shall submit to DES a permanent closure report for Tanks #4 and #5 at the Facility in accordance with Env-Or 408.10.
4. Berlin shall send **all** correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent to DES as follows: Michael Juranty, P.E., Supervisor, Oil Compliance Section, Oil Remediation and Compliance Bureau, DES Waste Management Division, P.O. Box 95, Concord, NH 03302-0095 ~ Fax: (603) 271-2181 ~ e-mail: Michael.Juranty@des.nh.gov.

#### **F. STIPULATED PENALTIES**

Berlin agrees to pay a stipulated penalty of \$1,000 per month, for each month, or part thereof, in which it is not in compliance with any deadline set out in the preceding section. If stipulated penalties become due, payments shall be by check made payable to "Treasurer, State of New Hampshire" and mailed to DES Legal Unit, P.O. Box 95, Concord, NH 03302-0095, Attn: Compliance Attorney, within 15 days of receipt of each notice from DES that payment is required.

#### **G. CONSENT AND WAIVER OF APPEAL**

1. By executing this Administrative Order by Consent, Berlin agrees that this Order shall apply to and be binding upon its officers, directors, successors and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By executing this Administrative Order by Consent, Berlin waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Waste Management Council, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.
3. By executing this Administrative Order by Consent, Berlin waives any right to a hearing on or

appeal of the administrative fine(s) specified in section F provided by statute, rule, or common law, and waives any right to object to the fine(s) in any collection action initiated by DES due to non-payment of the fine(s) by Berlin.

**The City of Berlin, New Hampshire**

\_\_\_\_\_  
By: James Wheeler, P.E., City Manager  
Duly Authorized

\_\_\_\_\_  
Date

**NH Department of Environmental Services**

\_\_\_\_\_  
Thomas S. Burack, Commissioner

\_\_\_\_\_  
Date

cc: DES Legal Unit

ec: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Michael Juranty, P.E., Supervisor, Oil Compliance Section, ORCB/WMD/DES  
Laura Weit-Marcum, Enforcement Coordinator, ORCB/WMD/DES