

Leighton's Service Station (Registration #9671)

- Department Order Under Appeal



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

Certified Mail # 7008 1300 0002 1453 7069

December 9, 2009

Henry W. Leighton, Jr.
968 Minot Avenue
Auburn, ME 04210

RE: Leighton's Service Station, Underground Oil Storage Facility (Registration # 9671)

Dear Mr. Leighton:

The enclosed Administrative Order is issued for failure to resolve violations of the State's Ground Water Protection statutes, 38 M.R.S.A. § 561 et seq., and the Department's Rules for Underground Oil Storage Facilities, 06-096 CMR Chapter 691. These violations include failure to submit a passing annual inspection report and for failure to maintain cathodic protection on the underground oil storage tanks and piping. Please read the Administrative Order carefully.

The Order requires you to gain compliance with these requirements within thirty (30) days, or petroleum products may not be delivered to or dispensed from the facility while it remains in violation of the statute. If you do not achieve compliance within this period, state law requires the Department to attach a red tag to the fill pipe of each tank that is subject to the delivery and dispensing prohibition. The red tags may not be removed and the tanks may not be operated until the violations are resolved. Failure to comply with the requirements of the Order may be subject to prosecution under Maine laws.

This Order may be appealed to the Board of Environmental Protection pursuant to 38 M.R.S.A. § 563(9)(D) by filing a written petition with Maine's Board of Environmental Protection within 5 working days after your receipt of this order. Within 15 working days after receipt of the petition, the Board will hold a hearing on the matter. Within 7 working days after the hearing, the Board will make findings of fact that continue, revoke or modify the Administrative Order. The decision of the Board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter VII.

You may file a written appeal by mail or by hand delivery to the following address:

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679-2094
(207) 764-0477 FAX: (207) 760-3143

Board of Environmental Protection
c/o Maine Department of Environmental Protection
Ray Building
State House Station # 17
Augusta, Maine 04333 - 0017

Please note that the appeal must be received by the Board within five (5) working days after your receipt of this Order.

If you have any questions about the Administrative Order, please contact me at (207) 287-7674.

Sincerely,



Scott D. Whittier, Director
Division of Oil & Hazardous Waste Facilities Regulation
Bureau of Remediation & Waste Management

Cc: Peter Carney, Director of Procedures & Enforcement, MDEP
Mary Sauer, Assistant Attorney General, Office of Attorney General
Liza Woodward, Environmental Specialist, MDEP



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF:

HARRY LEIGHTON, JR.)	UNDERGROUND OIL
AUBURN, MAINE)	STORAGE FACILITY
REGISTRATION # 9671)	ADMINISTRATIVE ORDER
)	38 M.R.S.A. § 565-A

In conformance with Maine's *Underground Oil Storage Facilities and Ground Water Protection* law, 38 M.R.S.A. § 565-A, the Maine Department of Environmental Protection (Department) hereby issues this Order to Harry Leighton, Jr., requiring him to cease deliveries of oil to, and operation of, the underground oil storage tanks (USTs) described in this Order, within thirty (30) days of receipt of the Order, unless and until he demonstrates compliance with Maine's *Underground Oil Storage Facilities and Groundwater Protection* law, 38 MRSA §§ 561 to 570-M (*Oil Law*), and the Department's *Rules for Underground Oil Storage Facilities*, 06-096 CMR 691 (*Rules*), based on the following findings of fact.

1. Harry Leighton, Jr. owns and operates underground storage tanks (USTs) for retail distribution of gasoline and for consumptive use at 968 Minot Avenue in Auburn, Maine, registration # 9671. The facility includes the following registered USTs:

Tank # 7: A five thousand [5,000] gallon cathodically protected double-walled UST installed on September 1, 1990 containing premium gasoline;

Tank # 8: A five thousand [5,000] gallon cathodically protected double-walled UST installed on September 1, 1990 containing plus gasoline;

Tank # 9: An eight thousand [8,000] gallon, cathodically protected double-walled UST installed on September 1, 1990 containing regular gasoline.

The underground piping for all three tanks is single walled and constructed of field coated cathodically protected steel.

2. Throughout the period addressed by this Order, Harry Leighton, Jr. was, and remains, subject to the *Oil Law*, 38 M.R.S.A. §§ 561 to 570-M, and the *Rules*, 06-096 CMR 691.
3. The *Oil Law*, 38 M.R.S.A. § 563(9)(A), states:

The owner of an underground oil storage facility shall submit annual inspection results to the department on or before July 1, 2003 and on or before July 1st annually thereafter. The results must be recorded on a form provided by the department and must include a certification statement, signed by an underground

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oil storage tank inspector or an underground oil storage tank installer certified by the Board of Underground Oil Tank Installers under Title 32, chapter 104-A that each tank and associated piping have been inspected and any deficiencies discovered during the inspection have been corrected. The owner shall submit the completed form to the department no more than 30 days after the date on which the inspection was completed.

4. The *Rules*, 06-096 CMR 691(5)(D)(20), require that the owner of an underground oil storage tank facility shall submit annual inspection results to the Department on or before July 1, 2003, and on or before July 1st annually thereafter, stating in relevant part:

The facility owner shall submit annual inspection results to the commissioner on or before July 1, 2003, and each July 1st thereafter. The inspection results must be recorded on a form provided by the commissioner and must include a certification statement, signed by an underground oil storage tank installer or inspector certified by the Maine Board of Underground Oil Storage Tank Installers. Such a certification must certify that the entire facility was inspected and any deficiencies discovered have been corrected. Inspection and correction records must also be maintained in accordance with section 5(D)(19). All corrections must be completed prior to the annual July 1st reporting deadline.

5. The *Oil Law*, 38 M.R.S.A. §§ 564 & 564(2-A)(C) state in relevant part:

The board shall adopt rules necessary to minimize, to the extent practicable, the potential for discharges of oil from underground oil storage facilities and tanks used to store motor fuel or used in the marketing and distribution of oil to others. These rules must ensure that requirements and standards governing facilities under this section assure that the State's program meets requirements under the United States Resource Conservation and Recovery Act, Subtitle I, as amended. These rules are limited to the following requirements.

2-A Monitoring, maintenance and operating procedures for existing, new and replacement facilities and tanks. The board's rules must require:

C. Voltage readings for cathodically protected systems by a cathodic protection tester 6 months after installation and annually thereafter.

6. The *Rules*, 06-096 CMR 691(5)(D)(4)(a) & (D)(4)(e) state in relevant part:

(4) Operation and Monitoring Requirements for Galvanic Cathodic Protection Systems

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- (a) All galvanic cathodic protection systems must be operated and maintained to continuously provide adequate corrosion protection to the underground metal components of the facility routinely storing or containing oil, and in a manner that ensures no leaks occur during the operational life of the facility. Adequate corrosion protection is indicated by a cathodic protection test reading of at least negative 0.85 volts. Steel composite tanks without secondary containment and continuous interstitial space monitoring must comply with this requirement.
- (e) Repairs of a galvanic cathodic protection system must be completed by a Maine Certified Underground Oil Tank Installer within 180 days of a failed test.

7. As of the date of this order Harry Leighton, Jr. has failed to operate and maintain galvanic cathodic protection systems in accordance with M.R.S.A. 564(2-A)(c) and 06-096 CMR (5)(D)(4)(a) & (D)(4)(e). The last passing test of the cathodic protection of the tanks and piping was conducted on April 7, 2006. The cathodic protection of the tanks and piping was tested again on November 27, 2007 and December 12, 2007 with failing results for all three tanks and the associated piping. Failing cathodic protection means that the tanks or piping are not protected from corrosion, and are at risk of failure. Repairs of a galvanic cathodic protection system must be completed by a Maine Certified Underground Oil Tank Installer within 180 days of a failed test.

Pursuant to 06-096 CMR 691(17)(a) and (f)

(17) Repairs other than relining

- (a) Repairs are allowed in accordance with this paragraph to tanks and piping constructed of fiberglass, cathodically protected steel and other noncorrosive materials approved by the commissioner.
- (f) Tank and piping repairs are to be conducted in accordance with manufacturer specifications or in accordance with the National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

Because the piping was field coated, there are no "manufacturer specifications" which apply to repair of the piping. The National Fire Protection Association Standard 30 contains no provisions concerning repair of cathodic protection. Because there are no manufacturer's specifications or provision in NFPA standard 30, the piping must be removed and replaced.

8. As of the date of this Order, Harry Leighton, Jr. has failed to submit to the Department passing annual inspection results on or before July 1st for the years 2007 and 2008 that

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indicate each tank and associated piping have been inspected and any deficiencies discovered during the inspection have been corrected. The last passing annual inspection submitted for this facility was conducted on April 7, 2006. By failing to submit passing annual inspection results, Harry Leighton, Jr. has failed to comply with 38 M.R.S.A. § 563(9) and 06-096 CMR 691(5)(D)(20).

9. The Department issued a Notice of Violation (NOV) dated October 2007 to Harry Leighton, Jr. for failure to submit a passing 2007 annual inspection.
10. The Department issued a NOV dated March 12, 2009 to Harry Leighton, Jr. for failure to submit a passing 2008 annual inspection.
11. The *Oil Law*, 38 M.R.S.A. § 565-A(1) states in relevant part:

[T]he commissioner may, after providing an owner or operator of an underground oil storage tank with a notice of violation for failure to comply with a requirement of this subchapter and after providing a reasonable opportunity for correction of the violation, issue an administrative order requiring the owner or operator of the underground oil storage tank that is the subject of the violation to cease deliveries of oil to the tank and to cease operation of the tank and associated piping until the violation has been corrected. The commissioner shall issue an administrative order to cease deliveries to or operation of an underground oil storage tank subject to section 564 upon determining that:

- A. The tank is not equipped with the spill prevention, overfill protection, leak detection or corrosion protection measure required under section 564 and applicable department rules;
- B. The tank is not being operated or maintained in compliance with section 564 and applicable department rules and the owner or operator has failed to gain compliance with the requirements within 30 days of being provided with a citation for or written notice of the violation; or
- C. There is evidence of an ongoing release of product from the tank or facility at which the tank is located

12. The *Oil Law*, 38 M.R.S.A. § 565-A states in relevant part:

4. Identification of tanks subject to delivery prohibition. Whenever the commissioner issues an administrative order under subsection 1, department staff shall affix a red tag to the fill pipe of the underground oil storage tank. The owner or operator may not allow the deposit of oil into the tank while a red tag is affixed to the fill pipe.

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As used in this section, "red tag" means a tag, device or mechanism devised by the department for use in signifying that an underground oil storage tank is ineligible for product delivery. The tag must be red in color and must bear words clearly conveying that it is unlawful to deposit oil into the tank. The tag must be made of plastic or other durable, damage-resistant material and must be designed to be easily affixed to the tank fill pipe.

5. Prohibition. A person may not deposit oil into an underground oil storage tank that has a red tag affixed to the fill pipe or tamper with the tag except to remove it as authorized by the commissioner under subsection 6.
 6. Return to service. A red tag affixed pursuant to this section may not be removed until an underground oil storage tank inspector or underground oil storage tank installer certifies in writing to the commissioner that the applicable violations have been corrected and the commissioner authorizes removal of the tag. The commissioner shall remove or authorize the removal of the tag as soon as practicable upon receipt of the certification. The commissioner may remove or authorize the removal of the tag absent confirmation that the violations have been corrected in emergency situations or when removal is determined to be in the best interest of the public.
13. The *Oil Law*, 38 M.R.S.A. § 565-A(3), provides for the appeal of an order issued pursuant to 38 M.R.S.A. § 565-A(1), as follows:

An administrative order under subsection 1 may be appealed to the board by filing a written petition within 5 working days after receipt of the order. Within 15 working days after receipt of the petition, the board shall hold a hearing on the matter. All witnesses at the hearing must be sworn. Within 7 working days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the administrative order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

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ORDER

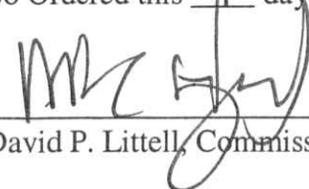
Pursuant to 38 M.R.S.A. § 565-A(1), Harry Leighton, Jr. is hereby ordered to:

Within thirty (30) days receipt of this Order, cease deliveries of oil to, and operation, of the USTs and associated piping located at the Leighton's Service Station facility in Auburn, Maine, identified in Paragraph 1 of this Order, unless and until:

- A. The underground piping for tanks 7, 8, and 9 is removed in accordance with 38 M.R.S.A. § 566-A(2) and 06-096 CMR 691(11)(C) and replaced with conforming piping pursuant to 06-096 CMR 691;
- B. The failing cathodically protected underground tanks 7, 8, and 9 are repaired in accordance with 06-096 CMR 691(5)(D)(4)(a)(b) and (e) and 06-096 CMR 691(Appendix A), or removed in accordance with 38 M.R.S.A. 566-A and 06-096 CMR 691(11)(c), and replaced with conforming tanks pursuant to 06-096 CMR 691;
- C. If repaired pursuant to Paragraph B above, the underground tanks 7, 8, and 9 interstitial space is tightness tested according to manufacturer's instructions prior to repairing the cathodic protection and the tightness test results are submitted to the Department, and the underground tanks 7, 8, and 9 are inspected by a corrosion expert and a copy of the corrosion expert's report is submitted to the Department documenting that the tanks have been repaired in accordance with 06-096 CMR 691(5)(D)(4)(a, b and e), 691(11)(C), 691 (Appendix A) and 38 M.R.S.A § 566-A(2); and

A passing annual inspection report is submitted to the Department indicating the tanks and associated piping have been inspected by a Maine certified underground oil storage tank installer or inspector and any deficiencies discovered during the inspection have been corrected, in accordance with 38 M.R.S.A. § 563(9)(A) and 06-096 CMR 691(5)(D)(20).

So Ordered this 4TH day of DECEMBER, 2009.



FOR
David P. Littell, Commissioner

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NOTICE OF APPEAL RIGHTS

The person to whom this order is directed may appeal this Order to the Board of Environmental Protection by filing a written petition with the Board within five (5) working days after your receipt of this Order. The petition may be hand delivered to the Board at Ray Building, Hospital Street, Augusta, Maine or sent by mail to Board of Environmental Protection, 6 State House Station, Augusta, Maine 04333.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HENRY W LEIGHTON JR
968 MINOT AVENUE
AUBURN ME 04213

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Henry W Leighton Jr Agent
B. Received by (Printed Name) Addressee
Wanda Trapp Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number **7008 1300 0002 1453 7069**
(Transfer from service label)
PS Form 3811, February 2004 Domestic Return Receipt

102595-02-M-1540