State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867

GRJH, Inc.
P.O. Box 728
Sharon, CT 06069

Re: Lancaster Sunoco
218 Main Street
Lancaster, NH

NOTICE OF PROPOSED ADMINISTRATIVE FINE AND HEARING

NO. AF 01-016

April 23, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division (the Division) to GRJH, Inc., pursuant to RSA 146-A:15, RSA 485-C:18, and Env-C 601.05. The Division is proposing that fines totaling $58,000 be imposed against GRJH for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division (the Division), is an administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH 03301.

2. GRJH, Inc. (GRJH) is a New Hampshire corporation having a mailing address of PO Box 728, Sharon, CT 06069. GRJH is the successor in interest to Peterson Petroleum of New Hampshire (Peterson Petroleum) and RGLL, Inc.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 146-A authorizes the Department of Environmental Services (DES) to regulate the investigation and remediation of petroleum releases. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted Env-Ws 412 to implement standards for reporting and remediation of oil discharges. On November 2, 1991, the Commissioner adopted Env-Ws 412, rules regarding the procedures for the reporting and remediation of oil discharges. On November 20, 1996, the Commissioner readopted these rules.

2. RSA 146 A:15 authorizes the Commissioner of DES to impose fines of up to $2,000 per offense for violations of RSA 146-A or rules adopted pursuant thereto. Pursuant to RSA 146-A:15(a), the Commissioner has adopted Env-C 606 to establish a schedule of fines for such violations.

3. RSA 485-C authorizes the DES to regulate the investigation, management and remediation of groundwater, as well as the establishment of groundwater management zones and issuance of groundwater management permits. Pursuant to RSA 485-C:4, the Commissioner of DES has adopted Env-Wm 1403, rules to implement standards for the management and remediation of groundwater. (effective February 24, 1999, which supercedes Env-Ws 410, effective February 11, 1993 through

February 23, 1999).

4. RSA 485-C:18 authorizes the Commissioner to impose fines of up to $2,000 per offense for violations of RSA 485-C or rules adopted pursuant thereto. Pursuant to RSA 485-C:18, the Commissioner has adopted Env-C 609 to establish a schedule of fines for such violations.

5. GRJH owns and operates the Sunoco (Former BP Station) Service Station at 218 Main Street in Lancaster (the Facility). The underground fuel storage tanks are registered with the Division in the name of RGLL, Inc. The Facility ID# is 0-111867.

6. Env-Wm 1403 establishes procedures and requirements for investigating, remediating, and managing contamination at sites where discharges of regulated contaminants have occurred and establishes procedures for monitoring the groundwater.

7. Env-Wm 1403.12(a)(1) requires a legally responsible person to apply for and obtain a groundwater management permit for a site where the discharge of a regulated contaminant at that site has caused and continues to cause the groundwater quality criteria of Env-Wm 1403.03 to be violated.

8. Env-Wm 1403.13(a)(1) requires that an applicant for a groundwater management permit submit a signed application for a groundwater management permit within 60 days following DES approval of a remedial action plan.

9. Env-Wm 1403.13(a)(2) requires that an applicant for a groundwater management permit submit a signed application for a groundwater management permit within 60 days of a request by the DES to submit an application.

10. Env-Wm 1403.15(f) requires monitoring of groundwater in compliance with groundwater management permit conditions until contamination sources are removed or treated and compliance with groundwater quality is achieved.

11. Env-Wm 1403.23(b) requires the permittee to comply with all conditions in the original groundwater management permit, regardless of whether a renewal application is filed, until the Permit is renewed, the Facility is closed in accordance with all applicable requirements, or a certificate of no further action is issued by DES.

12. On December 26, 1990, DES issued Groundwater Management Permit No. GWP-880821-L-001 (the Permit) for the Facility to Peterson Petroleum. The Permit required tri-annual monitoring of groundwater quality and stipulated remedial system closure criteria based upon soil quality results.

13. Condition No. 4 of the Permit requires the Permittee to apply for renewal of the Permit within six months of its expiration.

14. Condition No. 7 of the Permit requires groundwater monitoring of five monitoring wells and submission of the results in April, August and December for each year. The Permit requires that monitoring occur within 45 days of the stipulated due date.

15. The Division sent letters to Peterson Petroleum requesting compliance with the terms of the Permit on August 19, 1991; August 11, 1992; April 27, 1993; August 23, 1994; March 2, 1995; May 31, 1995; September 11, 1995; and July 5, 1996.

16. The Division sent letters to Peterson Petroleum requesting Peterson Petroleum to apply for renewal

of the Permit on September 11, 1995 and February 3, 1997. On July 20, 2000 and September 29, 2000, the Division sent by letters by certified mail Peterson Petroleum requesting Peterson Petroleum to apply for renewal of the Permit. Based on an application received October 18, 2000, the Permit was renewed on November 8, 2000.

17. Env-Ws 412 establishes procedures and requirements for notification, reporting, response actions, and investigations for sites where discharges of oil have occurred.

18. Env-Ws 412.11(d) requires responsible parties to implement a remedial action plan upon approval of the plan by DES.

19. Env-Ws 412.11(e) requires responsible parties to report the results of implementing a remedial action plan, including an evaluation of the effectiveness of the remediation, to DES in writing.

20. Condition No. 9 of the Permit requires operation of a soil vapor extraction (SVE) system until groundwater quality meets drinking water standards at the property boundaries and a soil sample obtained from a location near the monitoring well with the highest contaminant levels contains no more than 1.0 ppm benzene, toluene, ethylbenzene and xylene (BTEX) and no more than 10 ppm total petroleum hydrocarbons (TPH).

21. On October 26, 1989, DES approved a work plan to install an SVE system to treat soil and groundwater contamination at the Facility. The SVE system was installed at the Facility in October 1991.

22. By letters dated July 29, 1991 and April 9, 1992 to Peterson Petroleum, the Division requested activation of the SVE system and monthly operation reports for the SVE system. The Division also sent letters to Peterson Petroleum requesting SVE system status reports on August 11, 1992; April 27, 1993; September 11, 1995; and July 5, 1996.

23. To date DES has received one letter response dated September 19, 1995 and no completed reports. In correspondence dated February 3, 1997, DES informed Peterson Petroleum that current groundwater contaminant levels did not warrant active remedial measures at the Facility.

24. On August 24, 1999 DES approved a work plan and budget authorization for removal of contaminated soil from the Facility in order to enhance further attenuation of groundwater contamination. The excavation and disposal of 415 tons of contaminated soil was completed during the period July 5 through July 7, 2000.

IV. Violations Alleged

1. GRJH has violated Env-Wm 1403.15(f) and Env-Ws 412.11(d) and (e) by failing to submit groundwater monitoring data on eleven separate occasions during the five-year Permit monitoring period.

2. GRJH has violated Env-Wm 1403.23(b) and Env-Ws 412.11(d) and (e) by failing to continue groundwater quality monitoring on nine separate occasions after Permit expiration.

3. GRJH has violated Env-Wm 1403.23(a) by failing to apply for renewal of the Permit. Permit application submission was due six months prior to Permit expiration on June 26, 1996.

4. GRJH has violated Env-Wm 1403.23(b) by failing to comply with Permit Condition No. 9 to operate the SVE system until closure criteria were met.

5 GRJH has violated Env-Ws 412.11(e) by failing to submit the results of implementing the remedial action plan.

V. Proposed Administrative Fines

1. For the violation identified in IV.1, Env-C 606.04(d) specifies a fine of $2,000 per calendar month for each month or portion thereof the results are not submitted. For the 11 separate failures to report the results of implementation of the plan by groundwater monitoring and submission of analytical data as stipulated in the Permit for the site, at this time the Division is seeking a fine for one month only per violation for a total fine of $22,000.

2. For the violation identified in IV.2, Env-C 606.04(d) specifies a fine of $2,000 per calendar month for each month or portion thereof the results are not submitted. For the 9 separate failures to report the results of implementation of the plan by post-Permit groundwater monitoring for the site, at this time the Division is seeking a fine for one month only per violation for a total fine of $18,000.

3. For the violation identified in IV.3, Env-C 609.06(c) specifies a fine of $1,000 per calendar month or portion thereof that the Permit is not obtained after being informed in writing by DES that the Permit is required. Although the Division originally notified GRJH s predecessor-in-interest in writing on September 11, 1995, at this time the Division is seeking a fine only for the months since the first certified mail notice dated July 20, 2000 until the Permit was issued, for a total fine of $4,000.

4. For the violation identified in IV.4, Env-C 606.04(c) specifies a fine of $2,000 per calendar month for each month or portion thereof the remedial action plan is not implemented. For the 50 separate failures to properly implement the remedial action plan during the period April 1992 through July 1996, at this time the Division is seeking a fine for one violation only for a total fine of $2,000.

5. For the violation identified in IV.5, Env-C 606.04(d) specifies a fine of $2,000 per calendar month for each month or portion thereof the results are not submitted. The Division notified GRJH s predecessor-in-interest in writing on 6 occasions during the period April 1992 through July 1996 on the dates identified in III.22 that SVE system status reports were required. For the 6 separate failures to report the results of implementation of the plan, at this time the Division is seeking a fine for one month only per violation for a total fine of $12,000.

The total fine sought is $58,000.

VI. Hearing, Required Response

GRJH has the right to a hearing to contest the Division s allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, June 4, 2001** at **9:00 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, GRJH is required to respond to this notice. Please respond **no later than May 18, 2001**, using the enclosed colored form as follows:

1. If GRJH plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.

2. If GRJH chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If GRJH wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate GRJH s interest in settling.

GRJH is not required to be represented by an attorney. If GRJH chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If GRJH wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, GRJH must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If GRJH does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that GRJH committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that GRJH committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that GRJH proves, by a preponderance of the evidence,** applies in this case:

1. The violation was a one-time or non-continuing violation, **and** GRJH did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** GRJH did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, GRJH was making a good faith effort to comply with the requirement that was violated.

3. GRJH has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.

4. Other information exists which is favorable to GRJH s case, which was not known to the Division at the time the fine was proposed.

NOTE ALSO that pursuant to Env-C 601.09(d), the fine can be **increased by 10%** for each of the circumstances listed below that the Division proves, by a preponderance of the evidence, applies in this case:

1. GRJH was aware of the requirement that was violated at the time of the violation.

2. Any environmental harm or threat of harm caused by the violation has not been corrected.

3. GRJH benefitted financially, whether directly or indirectly, from the violation.

4. GRJH did not make a good faith effort to correct the violation after being notified that the violation had occurred.

5. GRJH has a history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.

6. Other information exists which causes the violation to be more serious, for instance because a large area of land was impacted by the violation or an ecosystem was destroyed by the violation.

IMPORTANT NOTICE

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is GRJH s opportunity to present testimony and evidence that GRJH did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If GRJH has any evidence, such as photographs, business records or other documents, that GRJH believes show that GRJH did not commit the violation(s) or that otherwise support GRJH s position, GRJH should bring the evidence to the hearing. GRJH may also bring witnesses (other people) to the hearing to testify on GRJH s behalf.

If GRJH wishes to have an informal meeting to discuss the issues, GRJH must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via DES s Web page (www.state.nh.us/des). If GRJH has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

COPY

Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure *(NHDES Fact Sheet #CO-2 2000)*

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney

Lancaster Town Manager
Chairman, Lancaster Board of Selectmen
George G. Lombardo, P.E., Administrator, NHDES - ORCB
Lynn A. Woodard, P.E. NHDES-ORCB
Gary Lynn, P.E. NHDES-ORCB

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APPEARANCE

____ I/we will attend the hearing scheduled for **Monday, June 4, 2001** at **9:00 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

_____ _____
Signature Date

Name (please print or type):_____

Title:_____

WAIVER OF HEARING

___ I/we certify that I/we understand my/our right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of $58,000 paid to Treasurer, State of New Hampshire is enclosed.*

* *If you pay by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or $25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

_____ _____
Signature Date

Name (please print or type):_____

Title:_____

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095