The State of New Hampshire

Department of Environmental Services

Michael P. Nolin
Commissioner

October 28, 2004

NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR # 04-073

Michael McGinley
79 Cotton Hill Road
Belmont, NH 03220

RE: GILFORD, BIG APPLE GILFORD, EXISTING UNDERGROUND STORAGE TANK FACILITY (UST #A-0112386) DES #199904022)

Dear Mr. McGinley:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that the above-referenced facility, located at 4 Country Club Road, Gilford, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On July 8, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation ("Notice") will result in revocation of your Permit-to-Operate on January 26, 2005. This letter contains important compliance and procedural information. Please read it carefully. Also, note that due to the non-compliance status of your facility a Proposed Administrative Fine will be issued under separate cover.**

1. Env-Wm 1401.11 Inventory Monitoring

   Env-Wm 1401.11 requires inventory monitoring be conducted and inventory records be maintained on motor fuel, hazardous substance and bulk heating oil systems without secondary containment and leak monitoring for both tank and piping. DES has determined that inventory monitoring was not being conducted for the one 8,000-gallon gasoline and two 6,000-gallon gasoline USTs. Inventory monitoring must be conducted for the three USTs. Three months of inventory monitoring for the USTs shall be provided to DES.

2. Env-Wm 1401.21 Tank Standards for New Underground Storage Systems

   Env-Wm 1401.21 requires a UST system completed certificate be permanently affixed and visible to the division inspector at the facility premises for all new UST systems. The field inspection revealed that a certificate was not posted. A certificate shall be posted at the facility and verification in writing that the certificate has been posted shall be provided to DES.

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Telephone: (603) 271-3644 • Fax: (603) 271-2181 • TDD Access: Relay NH 1-800-735-2964
DES Web site: **www.des.nh.gov**

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than $1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0112386) shall be revoked effective **January 26, 2005**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

COPY

Lynn A. Woodard, P.E.
Supervisor
Oil Compliance and Initial Response Section

cc: Gretchen R. Hamel, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Health Officer, Town of Gilford

***** RETURN THIS PAGE ONLY *****

APPEARANCE

___ I desire a hearing in accordance with Env-Wm 1401 regarding the Permit.

Name:_____ Title:_____
(Please type or print legibly) (Please type or print legibly)

_____ Date:_____
Signature

WAIVER OF HEARING

___ I certify that I understand my right to a hearing regarding the revocation of the Permit and that I hereby waive those rights.

Name:_____ Title:_____
(Please type or print legibly) (Please type or print legibly)

_____ Date:_____
Signature

Please return to:

Department of Environmental Services Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner

November 3, 2004

Michael McGinley
79 Cotton Hill Road
Belmont, New Hampshire 03220

RE: GILFORD, BIG APPLE GILFORD, EXISTING UNDERGROUND STORAGE TANK FACILITY (UST # a-0112386) (DES #199904022)

Dear Mr. McGinley:

This correspondence is to notify you that the Notice of Non-compliance and Permit Revocation letter (NCPR # 04-073) you received dated October 28, 2004 incorrectly referenced the facility address. The correct facility address is 4 Country Club Road, Gilford.

We apologize for any inconvenience this may have caused. If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

COPY

Lynn A. Woodard, P.E.
Supervisor
Oil Compliance and Initial Response Section

✓ cc: Gretchen R. Hamel, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
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