The State of New Hampshire

Department of Environmental Services

Michael P. Nolin
Commissioner

December 21, 2004

Susan A. Booth
PO Box 663
Newport, NH 03773-0663

NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR # 04-087

RE: CLAREMONT, FORMER ART'S MARKET, EXISTING UNDERGROUND STORAGE TANK FACILITY (UST #A-0112173) (DES #199509029)

Dear Ms. Booth:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that the above-referenced facility, located on Route 120, Claremont, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On May 28, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility owner. 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 March 21, 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 1401.17 Temporary Closure

Env-Wm 1401.17(c) requires a single wall underground storage system without secondary containment and leak monitoring which has been temporarily closed for more than 12 months to be permanently closed within 30 days in accordance with Env-Wm 1401.18. DES has determined that two 4,000-gallon gasoline, one 3,000-gasoline, and one 3,000-diesel UST systems which have been temporarily closed exist at the above-referenced facility. All four UST systems must be permanently closed and a closure report in accordance with Env-Wm 1401.18 must be submitted to DES.

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.

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 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 #0112173) shall be revoked effective **March 21, 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

CERTIFIED MAIL # 7000 0600 0023 9934 3860

cc: Michael P. Nolin, Commissioner
Gretchen R. Hamel, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Health Officer, City of Claremont

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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