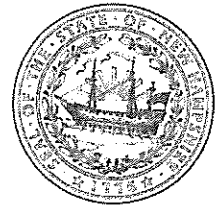




The State of New Hampshire
Department of Environmental Services

Clark B. Freise, Assistant Commissioner



April M. Gness
107 High Street
Danbury, NH 03230

Richard Gness
P.O. Box 103
Danbury, NH 03230

Re: Dick's General Store, 717 US Route 4
Danbury, NH
UST #0112726/DES Site #199607052

**ADMINISTRATIVE ORDER
No. 17-003 WMD**

March 10, 2017

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division, to April Gness, and Richard Gness, under the authority of RSA 146-C:9-a. This Administrative Order is effective upon issuance.

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. April M. Gness is an individual, doing business as *Dick's General Store*, having a mailing address of 107 High Street, Danbury, NH 03230.
3. Richard Gness is an individual having a mailing address of P.O. Box 103, Danbury, NH 03230.
4. April Gness and Richard Gness may be collectively referred to, at times, hereinafter as "the Responsible Parties."

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.

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
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2. April M. Gness is the current recorded owner of real property located at 717 US Route 4 in Danbury, New Hampshire; more particularly identified on Danbury Tax Map 201 as Lot 130 (the "Property").
3. One 3,000-gallon gasoline, double-walled underground storage tank ("UST") with safe suction single-walled piping without leak monitoring ("tank #3B"); and one 9,000-gallon gasoline, double-walled UST with non-safe suction, single-walled piping without leak monitoring ("tank #3A") were previously constructed on the Property, further identified by DES as UST #0112726 at DES Site #199607052 (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 August 12, 1996, DES received a Registration for Underground Storage Tank Systems form for the Facility. The registration form, dated August 12, 1996, was signed by Richard Gness. Mr. Gness listed himself as the Facility Owner on the registration form.
7. On December 8, 1998, DES issued permit-to-operate #0112726 to Richard Gness to allow the operation of the UST at the Facility. The permit-to-operate expired on May 30, 2002. On May 1, 2002, DES reissued permit-to-operate #0112726 to Richard Gness to allow the operation of the UST at the Facility. The permit-to-operate expired on April 30, 2007. On May 2, 2007, DES reissued permit-to-operate #0112726 to Richard Gness to allow the operation of the UST at the Facility. The permit-to-operate included an expiration date of April 30, 2012.
8. On December 1, 2010, DES issued a new permit-to-operate to Richard Gness to allow the operation of the UST at the Facility (the "Permit"). The Permit does not expire.
9. On August 4, 2011, ownership of the Property was apparently transferred from Richard Gness to April Gness. It is not clear to DES if ownership of the Facility was transferred, as well.
10. RSA 146-C:3, III, requires the owner of a registered UST facility to report any changes in information, including owner's name and mailing address, within 10 days of the change.
11. RSA 146-C:3, I, states that the "owner of each existing [UST] facility shall register the facility with [DES] on forms provided by [DES] and shall provide the following information:
 - a. Facility name, location, and mailing address.
 - b. Owner's name, mailing address, and telephone number.
 - c. Contact person for this facility.
 - d. Tank information: the size, age, type of tank material, location (on-site), and product stored.
 - e. Demonstration of financial responsibility pursuant to the rules adopted under RSA 146-C:9, VII. [..]"
12. Env-Or 404.01(d) requires the owner of a registered UST facility to submit in writing to DES any change in the information required by RSA 146-C:3 within 10 days of the change.

13. The Responsible Parties did not report to DES a change in ownership of, or contact person for, the Facility in 2011.

14. RSA 146-C:17, II(a) states that by “August 8, 2012, owners of then-existing facilities shall submit to [DES] for each [UST] facility owned in the state a statement signed by both the owner and the designated operators in a format approved by [DES] identifying the designated class A and B operators, the name of the approved training program by which they are trained, the date that they were certified by the approved training program, and the expiration date regarding their certification.”

15. RSA 146-C:17, V, states that after “August 8, 2012, owners shall revise and resubmit to [DES] a signed statement that includes the information required in [RSA 146-C:17, II] whenever there is a change in designated class A or B operators or a change of approved training programs, or when a designated operator has been retrained as ordered by [DES] pursuant to RSA 146-C:21, within 30 days of the change for each affected [UST] facility.”

16. RSA 146-C:17, VI, states that after “August 8, 2012, newly designated class A and B operators shall be trained in accordance with an approved training program within 30 days of being designated. Newly designated class C operators shall be trained in accordance with an approved training program or by a certified class A or B operator before assuming the responsibilities of the class C operator.”

17. On November 16, 2011, Dennis Phelps attended DES UST Operator Training as an operator of the Facility.

18. On October 23, 2012, DES issued a letter entitled “Notice of Intent to Enforce – Operator Training” to Richard Gness. In the notice, DES requested that Mr. Gness submit a Statement of Training to DES designating the class A and B operators for the Facility within 90 days.

19. On November 6, 2012, DES received a Statement of Training designating Dennis Phelps, of Foley Oil Company, Inc. as the class A and B operator for the Facility. Mr. Gness still listed himself as the owner on the 2012 Statement of Training.

20. On November 16, 2013, the class A and B operator certification held by Dennis Phelps expired.

21. On November 22, 2013, Dennis Phelps attended DES UST Operator Training as an operator of the Facility.

22. Env-Or 405.01(j), and Env-Or 503.01, require that UST systems shall be equipped with a submerged fill tube that allows for at least 4 and less than 6 inches of clearance from the tank bottom to the highest point of the submerged fill tube cut.

23. Env-Or 405.06 requires overfill protection devices be installed and properly maintained on all UST systems. The primary overfill protection device on a UST system shall alert the transfer operator when the tank is no more than 90% full, or automatically and completely shut off flow into the tank when the tank is no more than 95% full.

24. Env-Or 405.09, and Env-Or 406.08, require that leak monitoring for piping be properly installed, operated, and maintained to continuously monitor to detect water and regulated substances.

25. Env-Or 406.20(a) states that the owner of a UST system shall test all leak monitoring equipment annually for proper operation.
26. Env-Or 406.20(b) states that the owner of a UST system shall submit the required information on a form obtained from DES or another representative form no later than 30 days after the date of the test.
27. On September 18, 2015, DES personnel inspected the Facility to determine compliance with RSA 146-C and the UST Rules. During the inspection of the Facility, DES staff observed and documented the following deficiencies:
 - a. The current class A and B operators shall be retrained and recertified in accordance with RSA 146-C:21 or replacement class A and B operators shall be designated, and the owner shall report to DES in accordance with the requirements of RSA 146-C:17, V;
 - b. The DES inspector could not document that the highest point of the drop tube was within 4 to 6 inches from the bottom of the tank for tanks #3A and #3B;
 - c. The DES inspector could not verify that the overfill protection device was installed at the required 90% alert or 95% shut off level for tanks #3A and #3B; and,
 - d. The DES inspector determined that annual leak monitor test documentation was not available for tanks #3A and #3B.
28. On September 21, 2015, DES received the results for annual leak monitoring and overfill protection tests conducted by Foley Oil Company at the Facility on September 18, 2015.
29. 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, overfill 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.
30. 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.
31. On November 16, 2015, DES issued Notice of Intent to Red Tag No. 15-025, and Letter of Deficiency ("LOD") No. WMD 15-093, to April Gness citing her failure to conduct and submit

annual leak monitoring test results; failure to provide overfill protection installation (including measurements) at the 90 percent alert or 95 percent shut off level; failure to provide drop tube replace records; failure to retrain and recertify class A and B operators in accordance with RSA 146-C:21; and failure to submit an updated UST registration form for the Facility.

32. On November 22, 2015, the class A and B operator certification held by Dennis Phelps expired.

33. On December 9, 2015, Mr. Gness met with DES staff to discuss the Notice/LOD. DES staff explained the corrective actions required to comply with the Notice/LOD.

34. On December 18, 2015, DES withdrew Notice of Intent to Red Tag No. 15-025 as compliance had been achieved with leak monitoring, overfill protection, and spill prevention requirements.

35. Env-Or 408.05(c) states that with “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**)

36. Env-Or 408.06(a) states that the UST “owner shall notify [DES] at least 30 days prior to any UST system permanent closure.”

37. Env-Or 408.10(a) states that a UST “owner shall submit a closure report to [DES] within 30 days of the samples being taken.”

38. On June 10, 2016, DES issued Notice of Intent to Red Tag No. 16-096 and LOD No. WMD 16-093 to April Gness under the authority of RSA 146-C:15. In the Notice/LOD, DES cited the failure to permanently close the single-walled non-monitoring piping systems, and failure to recertify class A and B operators for the Facility.

39. On September 17, 2016, annual leak monitoring was due to be conducted at the Facility. On October 17, 2016, annual leak monitoring test results for the Facility were due to be submitted to DES.

40. On October 25, 2016, DES received a phone call from Dennis Phelps stating he resigned as class A and B operator for the Facility.

41. To date, DES has not received notice that the single-wall piping without secondary containment associated with the UST at the Facility has been permanently closed.

42. DES has not received an updated Statement of Training designating new class A and B operators for the Facility.

43. DES has not received an updated registration form for the Facility, since 1996.

44. Per Env-Or 408.04(a), temporary closure of a UST system shall be accomplished by: (1) Removing all regulated substances from the system so that no more than one inch of residue remains in the tank; and, (2) Equipping each opening or access point, such as fill risers, with a lock to secure against unauthorized use or tampering.

45. Per Env-Or 408.04(b), all removed substances shall be handled and disposed of in accordance with applicable local, state, and federal requirements.

46. Per Env-Or 408.04(d), within 30 days of meeting the requirements for temporary closure of a UST system in Env-Or 408.04, the owner shall report the change in operational status by submitting an amended registration form to DES in accordance with Env-Or 404.01.

D. DETERMINATION OF VIOLATIONS

1. The Responsible Parties violated RSA 146-C:3, III, and Env-Or 404.01(d), by failing to report to DES the change in ownership of, or contact person for, the Facility within 10 days of the changes in 2011.
2. The Responsible Parties violated RSA 146-C:17 by operating the Facility without designated class A, B, and C operators who have been trained and certified in accordance with an approved training program; and, by failing to submit an updated and accurate Statement of Training for class A and B operators for the Facility.
3. The Responsible Parties violated Env-Or 408.05(c) by failing to permanently close the UST 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 and determinations, DES hereby orders the Responsible Parties as follows:

1. **Within 10 days of the date of this Order**, the Responsible Parties shall submit to DES an updated UST registration form for the Facility.
2. **Within 15 days of the date of this Order**, the Responsible Parties shall temporarily close the UST systems (tanks #3A and #3B) on the Property in accordance with Env-Or 408.04; **AND**, shall notify DES of their intent to permanently close the UST systems on the Property in accordance with Env-Or 408.06(a).
3. **Within 30 days of the date of this Order**, the Responsible Parties shall contract with, or employ, an individual primarily responsible for operating and maintaining the Facility to attend DES, or DES-approved, UST Operator Training; **AND**, the Responsible Parties shall submit to DES a new Statement of Training form designating a qualified and certified individual as the new class A and B operator of the Facility.
4. **Within 45 days of the date of this Order**, the Responsible Parties shall permanently close the UST systems on the Property in accordance with Env-Or 408.06 through Env-Or 408.10.
5. **Within 75 days of the date of this Order**, the Responsible Parties shall submit to DES a permanent closure report for the UST systems on the Property in accordance with Env-Or 408.10.
6. The Responsible Parties shall send correspondence, data, reports, and other submissions made in connection with this Administrative Order, other than appeals, to DES as follows:

Laura Weit-Marcum, Enforcement Coordinator
Oil Remediation and Compliance Bureau
DES Waste Management Division
P.O. Box 95, Concord, NH 03302-0095
Fax: (603) 271-2181 ~ e-mail: Laura.Weit-Marcum@des.nh.gov

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the N.H. Waste Management Council ("Council") by filing an appeal that meets the requirements specified in RSA 21-O:14 and the rules adopted by the Council, Env-WMC 200. The appeal must be filed **directly with the Council within 30 days** of the date of this decision and must set forth fully **every ground** upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/waste/index.htm>). Copies of the rules also are available from the DES Public Information Center at (603) 271-2975.

G. OTHER PROVISIONS

Please note that RSA 146-C:10, and RSA 146-C:10-a, provide for administrative fines, and civil penalties, for the violations noted in this Order, as well as for failing to comply with the Order itself. The Responsible Parties remain obligated to comply with all applicable requirements, in particular RSA 146-C and the UST Rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.



Clark B. Freise, Assistant Commissioner
Department of Environmental Services

cc: DES Legal Unit

ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Danbury Select Board and Health Officer
Laura Weit-Marcum, Enforcement Coordinator, ORCB/WMD/DES

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